

# Michigan Joint Task Force on Jail and Pretrial Incarceration

Meeting #4

October 18, 2019

Detroit, MI

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General inquiries and information: [JailsTaskForce@courts.mi.gov](mailto:JailsTaskForce@courts.mi.gov)

[pewtrusts.org](http://pewtrusts.org)

# Schedule of Meetings

1. ***Introductions and National Trends:*** July 24, Detroit
2. ***Research and Constitutional Landscape:*** August 23, Traverse City
3. ***Data and Policy, Part I:*** September 20, Grand Rapids
4. ***Data and Policy, Part II:*** October 18, Detroit
  - 1<sup>st</sup> Round of Subgroups:* November 1, Lansing
  - 2<sup>nd</sup> Round of Subgroups:* November 18, Lansing
5. ***Subgroups Report Out to Full Task Force:*** November 19, Lansing
  - 3<sup>rd</sup> Round of Subgroups:* December 5, Lansing
  - 4<sup>th</sup> Round of Subgroups:* December 16, Lansing
6. ***Presentation of Final Recommendations:*** January 9, Lansing
7. ***Post-Recommendation Meetings:*** TBD

# Agenda

- Additional Data Findings
  - Arrests vs. Criminal Filings
  - Length of Stay
- System Assessment Presentation
  - Arrest and Arrest Alternatives
  - Pretrial Release and Detention
  - Sentencing, Probation, and Parole

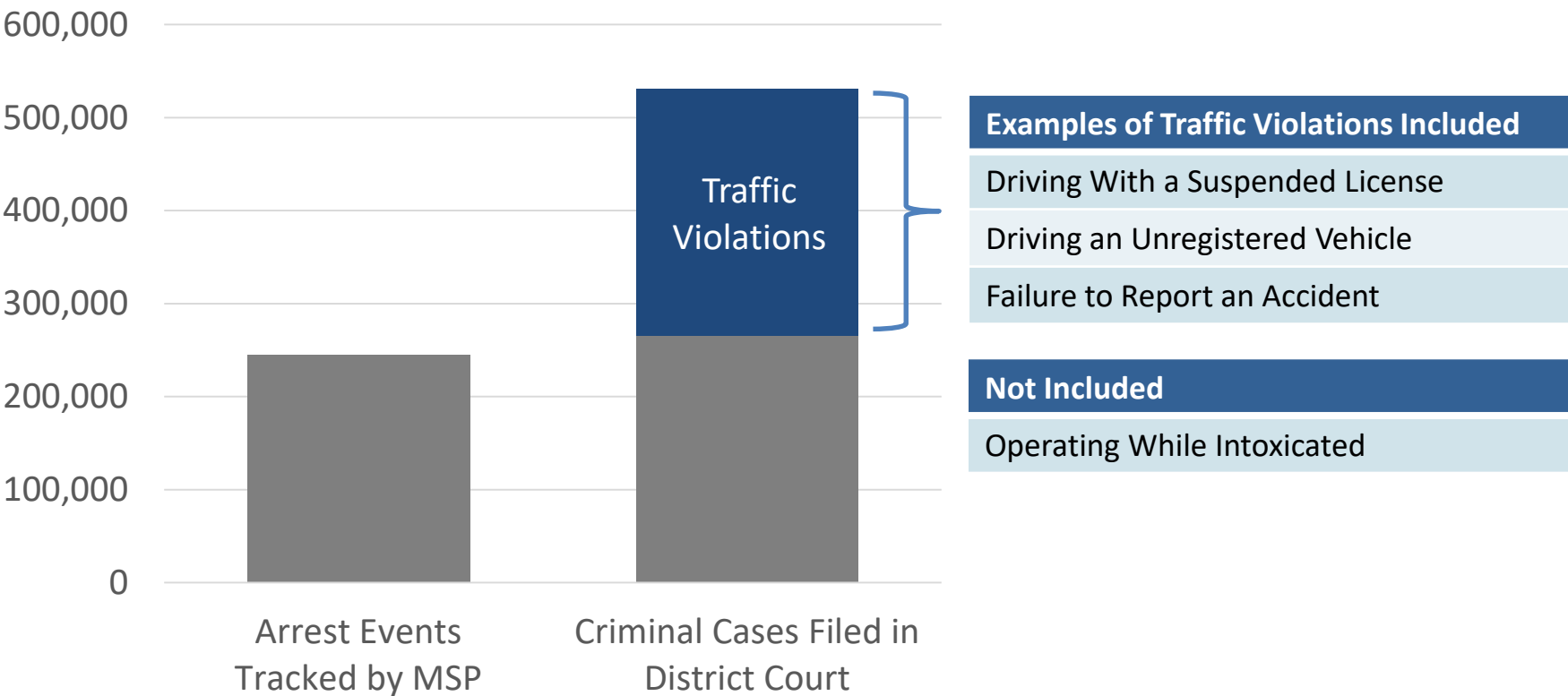
# Additional Data Findings

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# Context for Michigan Arrest Data

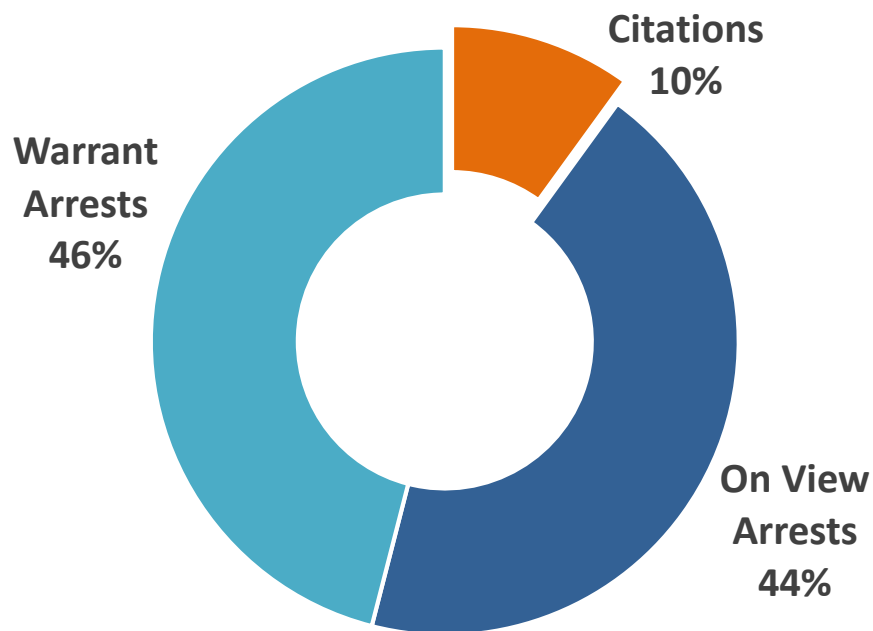
- Arrest data is provided by the Michigan State Police.
  - Data spans the period from 2008 to 2018.
- The statewide data is compiled from the nearly 600 agencies with arresting authority across the state.
- Arrest data includes three types of arrest events: on view arrests, warrant arrests, and **citations (not taken into custody)**.
  - All misdemeanors and felonies in Michigan are arrestable.
  - Citations may be issued in lieu of arrest only for misdemeanors or local ordinance violations punishable by 93 days in jail or less.
  - **Data does not include most traffic violations, such as driving with a suspended license.**

# Traffic violations made up half of all criminal cases filed in 2018.



Arrest events and criminal cases filed in district court, 2018. Note: Arrest data does not include most traffic violations. Offense information was identified for 84% of cases filed in district court. Source: Statewide arrest data, Michigan State Police; Statewide court data, State Court Administrative Office, Judicial Data Warehouse.

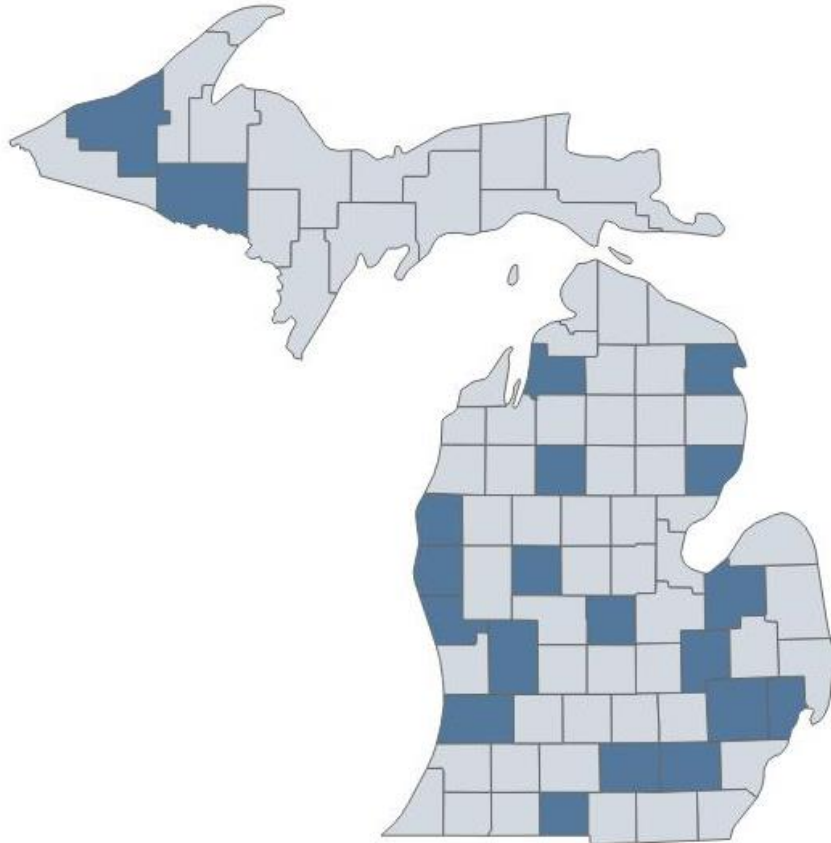
Citations made up 10 percent of arrest events in 2018, not including most traffic violations.



Examples of citable offenses included	Percent of arrest events cited, 2018
Transport Open Container	37%
Disorderly Conduct	25%
Retail Fraud Theft 3rd Degree	22%

Examples of citable offenses NOT included
Driving With a Suspended License
Driving an Unregistered Vehicle
Driving Without a License on Person

Jail data includes 20 counties from across the state.



*Rural*

Allegan

Alpena

Antrim

Branch

Gratiot

Mason

Mecosta

Missaukee

Iosco

Iron

Oceana

Ontonagon

Tuscola

*Small/mid*

Genesee

Muskegon

Washtenaw

Jackson

*Suburban*

Macomb

Oakland

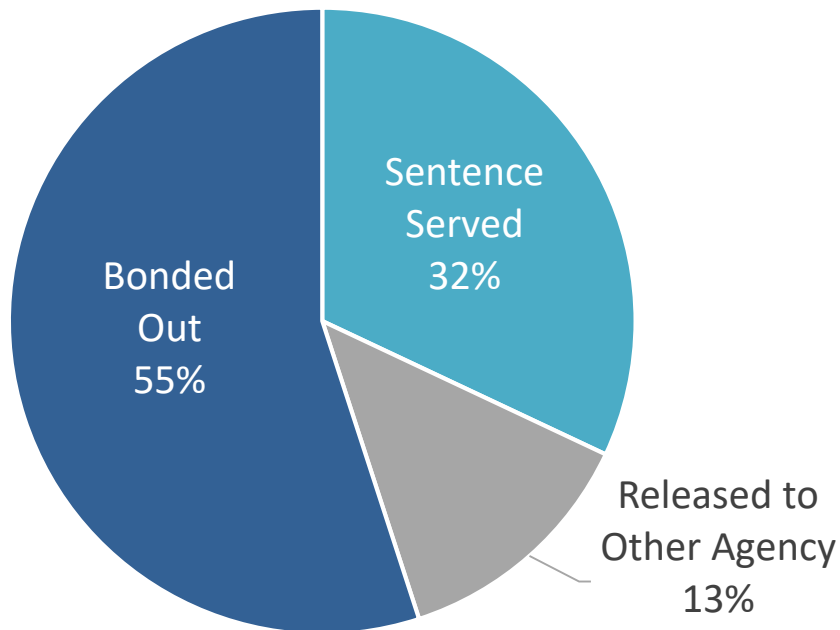
*Urban*

Kent



# One third of admissions were released after serving a sentence.

Jail Admissions by Release Reason

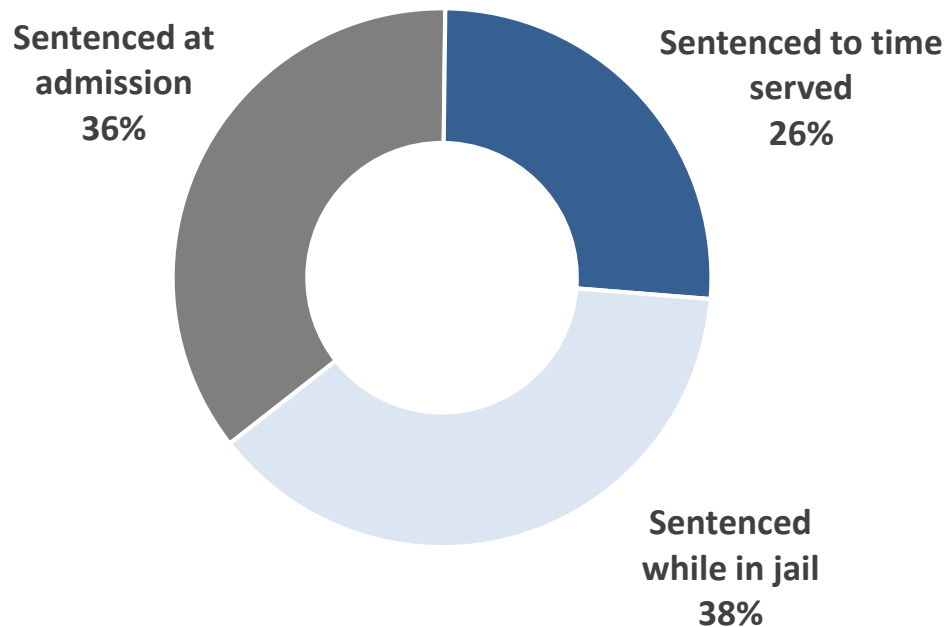


Note: Release information per booking was available in 78% of admissions. Source: Sample of jail data, 2016 to 2018, various Michigan jails.

# Linking Jail Data to Court Data

- Statewide court data includes:
  - **The Judicial Data Warehouse**, provide by the State Court Administrative Office (SCAO). Sentence information was available for 89% of cases.
  - **Felony sentencing data (OMNI)**, provided by the Michigan Department of Corrections (MDOC). Data does not include convictions that are statutorily sealed from public records (e.g., HYTA sentences).
- Individuals in the jail data were linked to the court data using: name, date of birth, county, and date range of jail stay.
- Approximately 35,000 “sentence served” releases were matched with court cases.

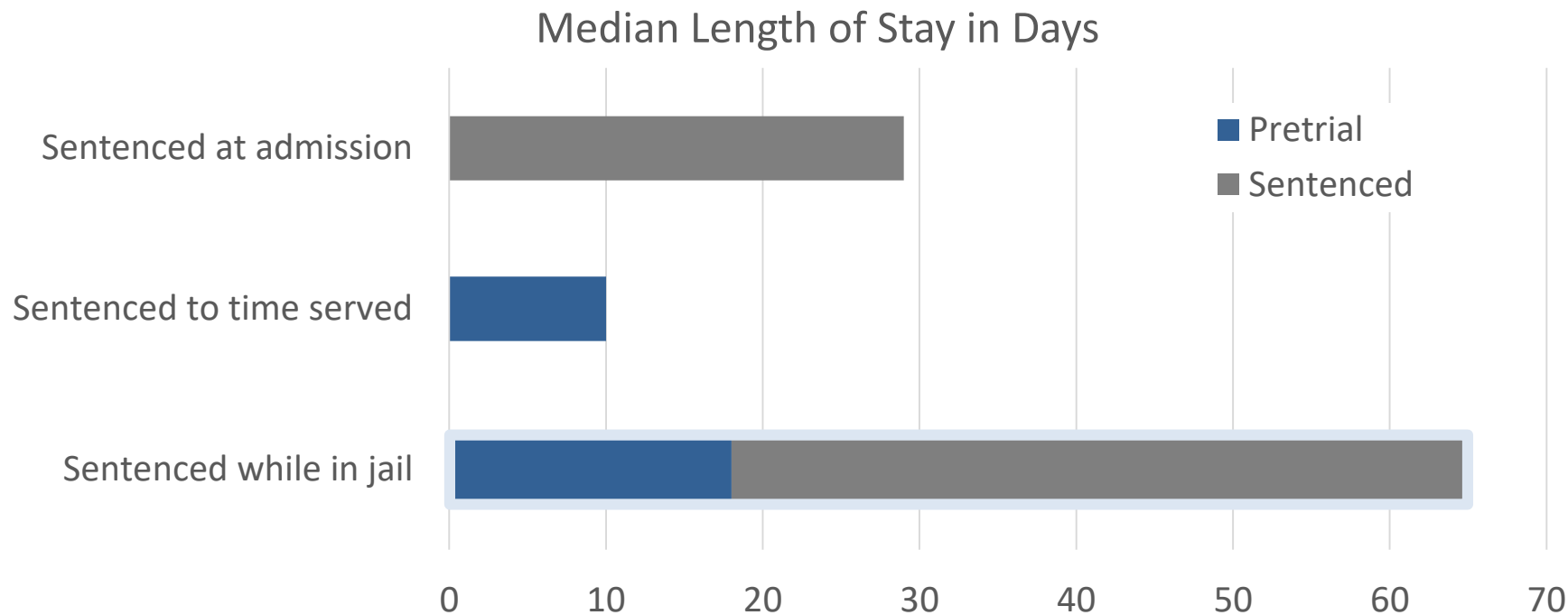
# Many “sentence served” releases were in jail pretrial.



Category	Definition
Sentenced to time served	Release date is within 2 days of sentence start date.
Sentenced at admission	Sentence start date is within 2 days of admission to jail, but not in previous category.
Sentenced while in jail	Sentence start date is after admission to jail and before release, but not in previous categories.

Sentence served releases by category, jail admissions, 2016-2018. Note: Approximately half of those released as sentence served were linked to the court data using name, date of birth, county, and date range of jail stay. Source: Sample of jail data, 2016 to 2018, various Michigan jails.

People sentenced while in jail had the longest lengths of stay, both for pretrial and sentenced periods.

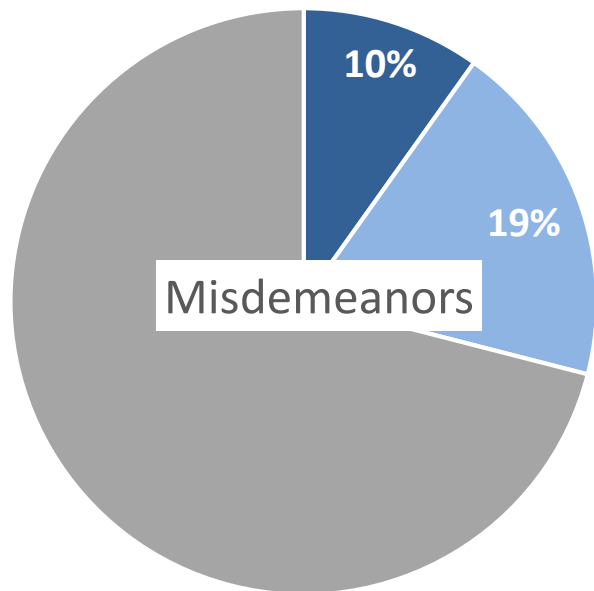


Sentence served releases by type, jail admissions, 2016-2018. Note: Approximately half of those released as sentence served were linked to the court data using name, date of birth, county, and date range of jail stay. Source: Sample of jail data, 2016 to 2018, various Michigan jails.

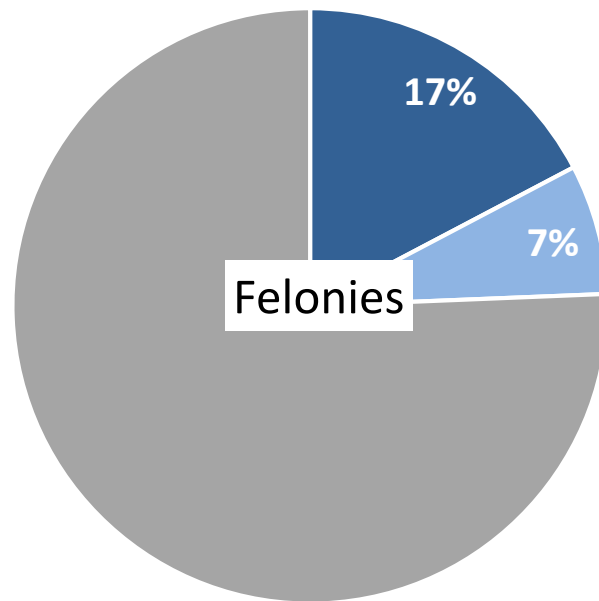
## Jail Credit in Court Data

- A judge will credit to an individual's sentence days served in jail prior to sentencing, called "jail credit" (MCL § 769.11b).
  - Jail credit is tracked for sentenced individuals in statewide court data (Judicial Data Warehouse and OMNI data).
  - The following jail credit analysis looks at felonies and misdemeanors sentenced to jail or jail and probation.
- Cases are considered "Sentenced to Time Served" if the days of jail credit were equal to the number of days sentenced to jail.

Roughly one quarter of felonies and misdemeanors sentenced to jail receive time served, some with subsequent probation terms.

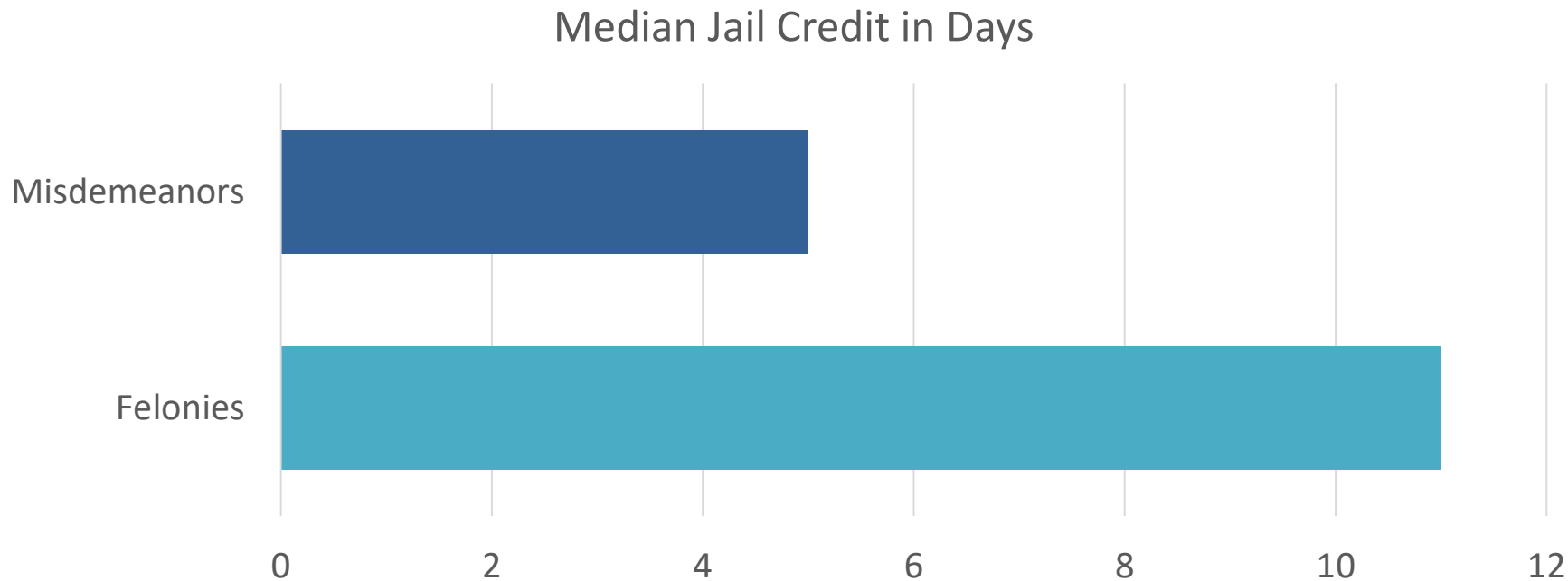


- Sentenced to time served plus probation
- Sentenced to time served
- Not sentenced to time served



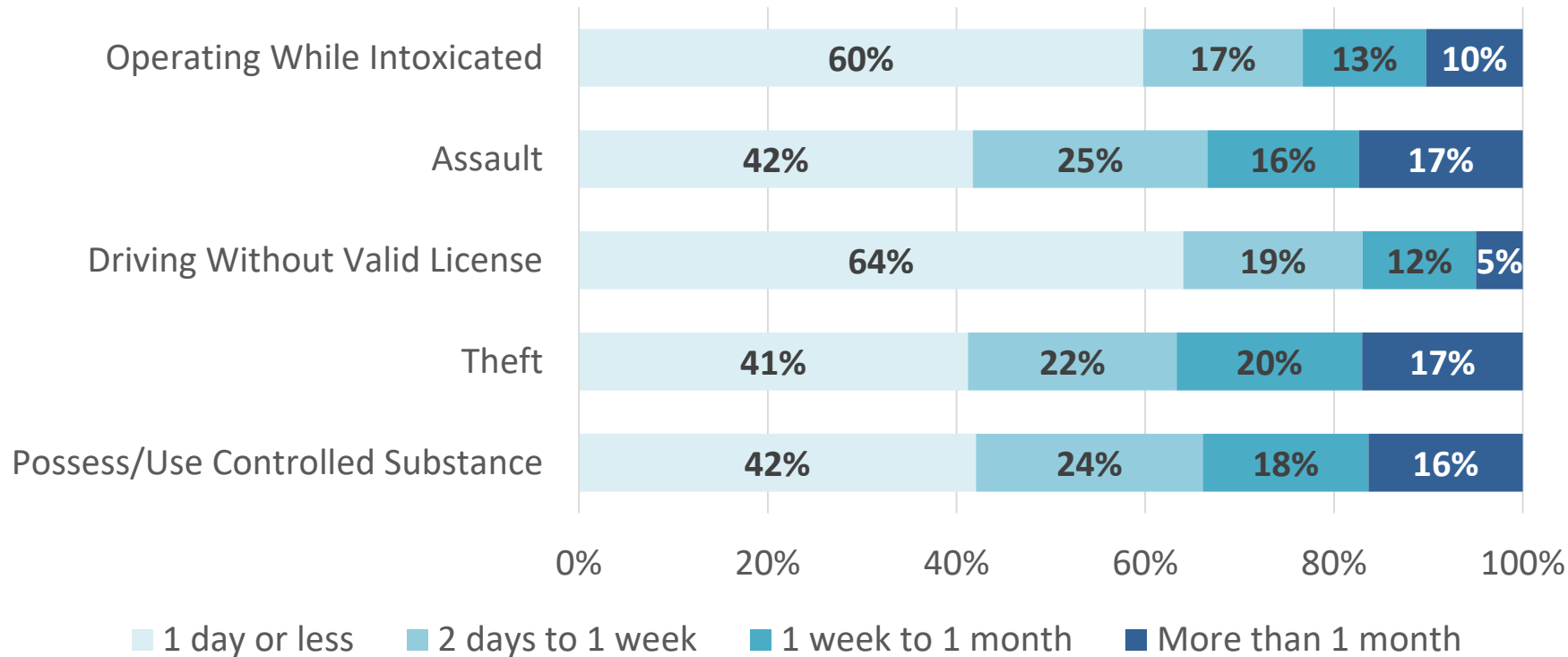
Statewide convictions sentenced to jail or jail and probation, 2018. Note: Sentence information was available for 90% of misdemeanors. Felonies do not include convictions statutorily sealed from public record. Source: State Court Administrative Office, Judicial Data Warehouse; Michigan Department of Corrections, OMNI data.

Felonies sentenced to time served spent 1½ weeks in jail, while misdemeanors spent just short of 1 week.



Median jail credit, statewide convictions sentenced to jail or jail and probation, 2018. Note: Sentence information was available for 90% of misdemeanors. Felonies do not include convictions statutorily sealed from public record. Source: State Court Administrative Office, Judicial Data Warehouse; Michigan Department of Corrections, OMNI data.

For top five offenses, releases within 1 day make up the greatest share, but 5 to 17 percent of people stayed longer than 1 month.





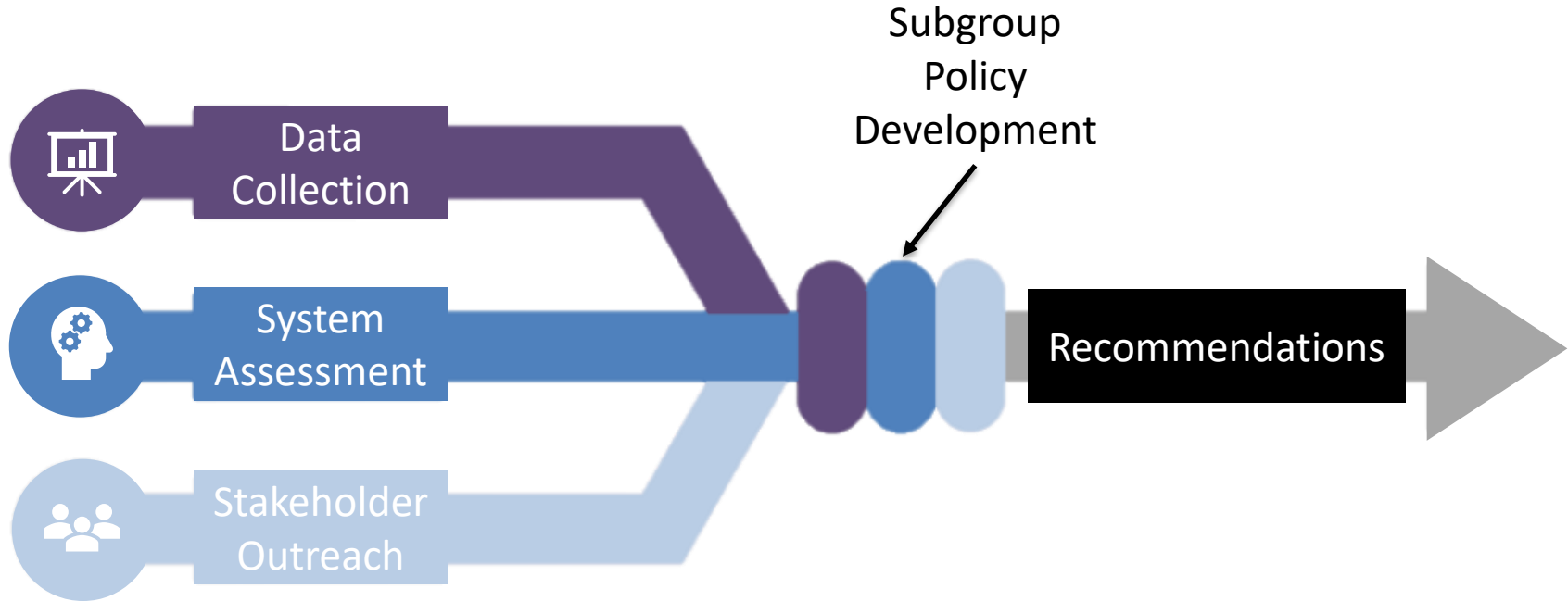
# Overview of System Assessment

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# Subgroup Membership

Group A: Arrest and Arrest Alternatives	Group B: Pretrial Release and Detention	Group C: Sentencing, Probation, and Parole
Members		
Bill Gutzwiller	Amanda Alexander	Prentis Edwards
Sheryl Kubiak	<b>Tom Boyd – Chair</b>	Monica Jahner
Bridget McCormack	Jerry Clayton	Mike Mueller
<b>Jim Miller – Chair</b>	Craig DeRoche	Dana Nessel
Jim Runestad	Garlin Gilchrist	Takura Nyamfukudza
Jim Talen	DJ Hilson	Bill Peterson
Tenisha Yancey	Rob VerHeulen	<b>Sylvia Santana – Chair</b>
Technical Assistance Staff		
Gracie Burger (GBurger@crj.org)	Quentin Weld (QWeld@crj.org)	Erika Parks (EParks@pewtrusts.org)

# Task Force Process



# System Assessment Areas

- Arrest and arrest alternatives
- Pretrial release and detention
- Sentencing, probation, and parole

# System Assessment Sources

- Arrest, court, and jail data
- Statutory and policy review
- Interviews, surveys, and roundtables with system stakeholders
  - Law enforcement and corrections officers
  - Prosecutors
  - Defense attorneys
  - Judges and magistrates
  - Crime victims and advocates
  - Mental health and substance abuse service providers
  - County commissioners
  - Pretrial practitioners
  - District court probation officers
  - MDOC probation and parole staff
  - System-impacted individuals

# Arrest and Arrest Alternatives

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# Roadmap: Arrest and Arrest Alternatives

- Background
- Research
- Arrest & Citation
- Deflection & Diversion
- Policy Questions to Consider

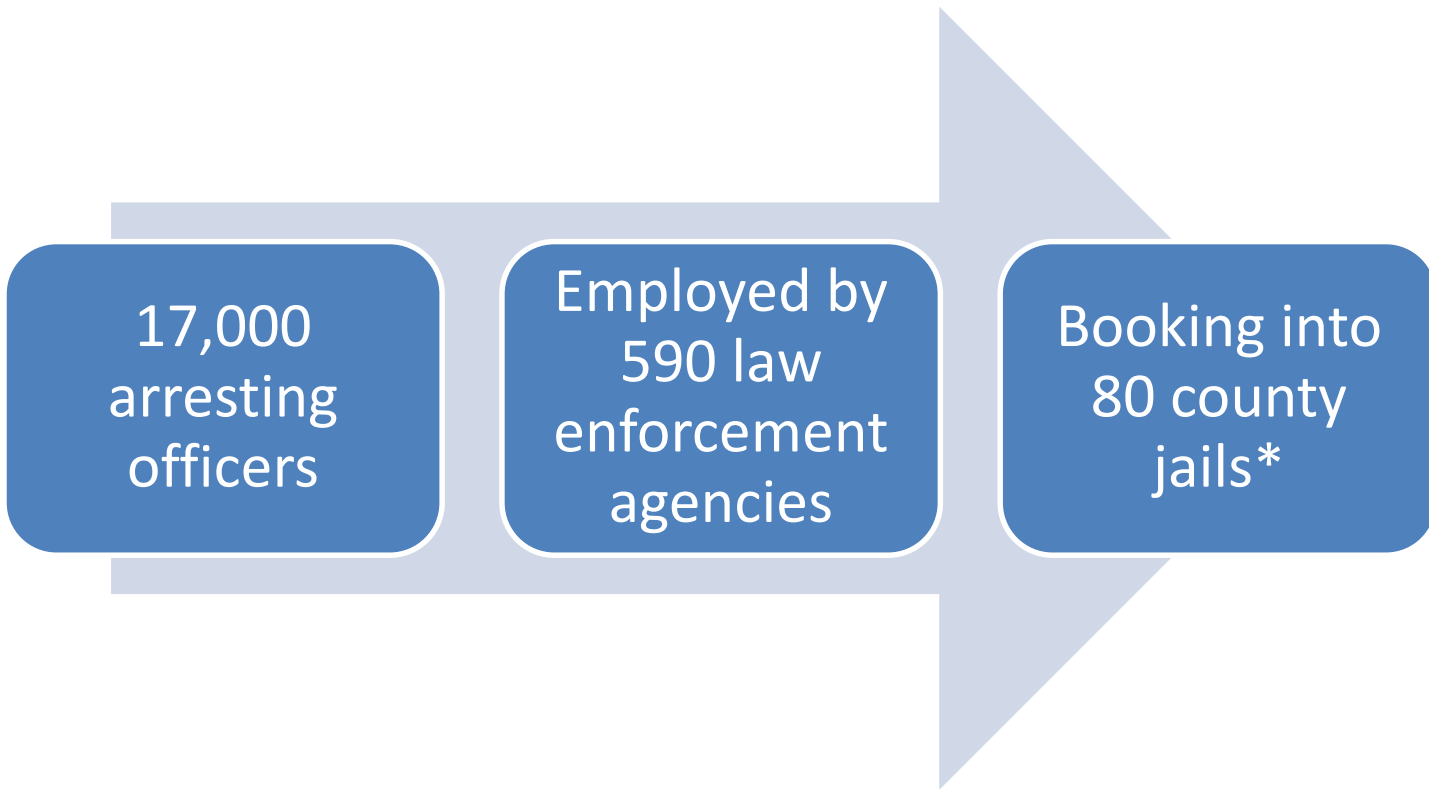
# Executive Order 2019-10

The Task Force's recommendations shall be guided by the following objectives:

- (1) To expand jail alternatives for those who can be managed in the community;
- (2) To safely reduce jail admissions, length of stay, and associated costs;
- (3) To support consistent, objective, and evidence-based pretrial decision-making;
- (4) To provide services and support to crime victims;
- (5) To improve the efficiency and effectiveness of the state's and counties' justice and public safety systems; and
- (6) To better align practices with research and constitutional mandates.

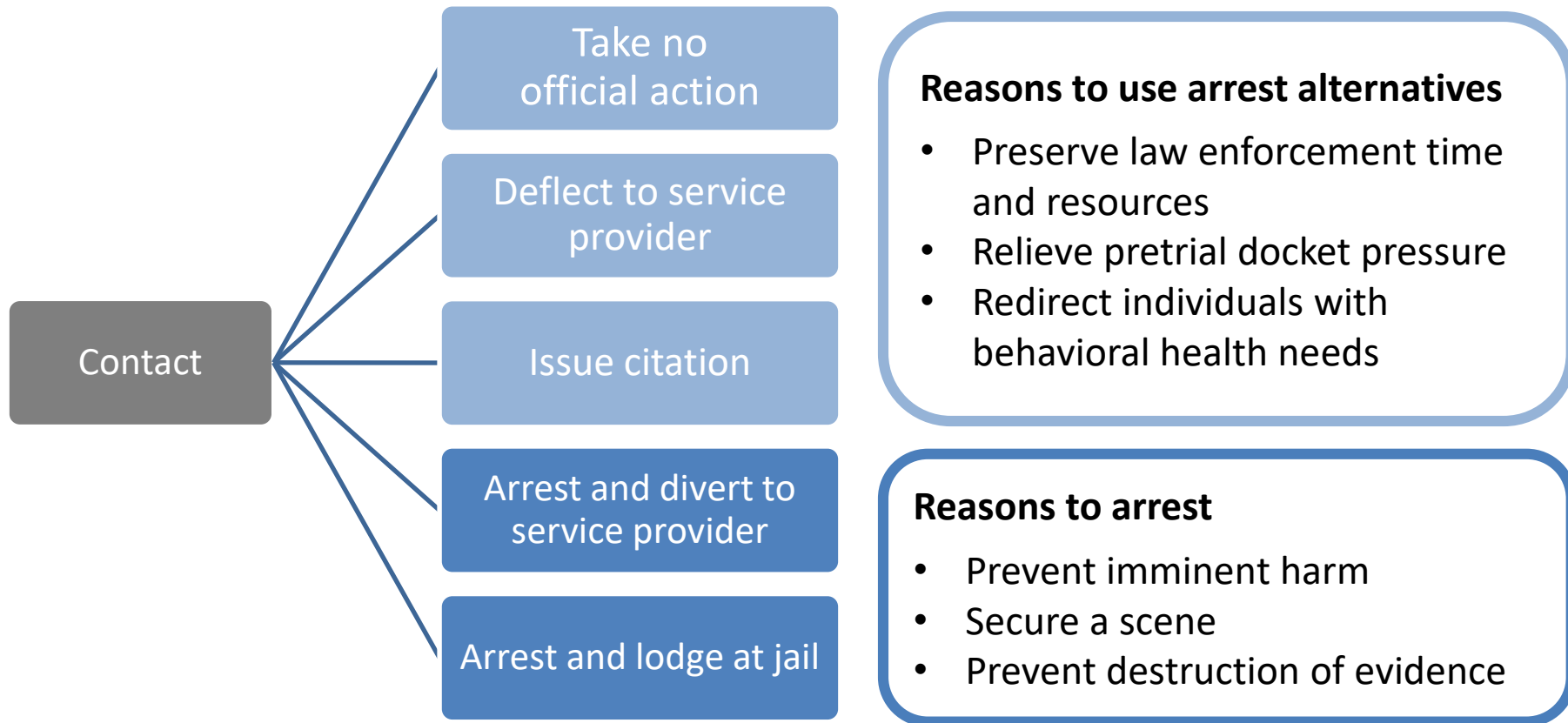


# Michigan Law Enforcement Landscape



\*Many local precincts operate temporary lock-ups where arrested individuals may also be held pre-arraignment.

# There are reasons for both arrest and arrest alternatives.



# Research suggests public safety tradeoffs for pretrial detention.

Pretrial detention significantly increased the likelihood of recidivism, controlling for charge type, criminal history, and demographics.

- Lowenkamp, VanNostrand, & Holsinger (2013). *The Hidden Costs of Pretrial Detention*.
- See also Heaton, Mayson & Stevenson (2017). *The Downstream Consequences of Misdemeanor Pretrial Detention*; Mueller-Smith (2015). *The Criminal and Labor Market Impacts of Incarceration*.

Reduced pretrial rearrests due to incapacitation was offset by increased recidivism over the next two years.

- Leslie & Pope (2016). *The unintended impact of pretrial detention on case outcomes: Evidence from New York City arraignments*.

# Research suggests public safety tradeoffs for pretrial detention.

Studies also show that people held before trial are more likely to...

Fail to  
appear for  
their case

Be convicted

Lose their job  
or income

Increase  
their  
dependence  
on public  
assistance

Lose their  
residence

Experience  
negative  
impacts on  
dependent  
children

Sources: Dobbie, W., Goldin, J., & Yang, C. S. (2018). The effects of pretrial detention on conviction, future crime, and employment: Evidence from randomly assigned judges. *American Economic Review*, 108(2); Holsinger, A. M., & Holsinger, K. (2018). Analyzing bond supervision survey data: The effects of pretrial detention on self-reported outcomes. *Federal Probation*, 82(2).

There is evidence that arrest alternatives can reduce rearrests.

Citations in lieu of  
arrest





















Civil citations in  
lieu of criminal  
citations

Drug arrest  
deflection

Crisis Intervention  
Team (CIT)  
training

Law Enforcement  
Assisted Diversion  
(LEAD)

## Little guidance exists at the state level for use of jail alternatives.

	Deflection	Citation	Arrest	Diversion
Statute defines				
Statute offers guidelines for use				
Statute lists eligible offenses				
Statute lists presumptive offenses				
Statewide data tracked				

# Michigan law authorizes both on view and warrant arrests.

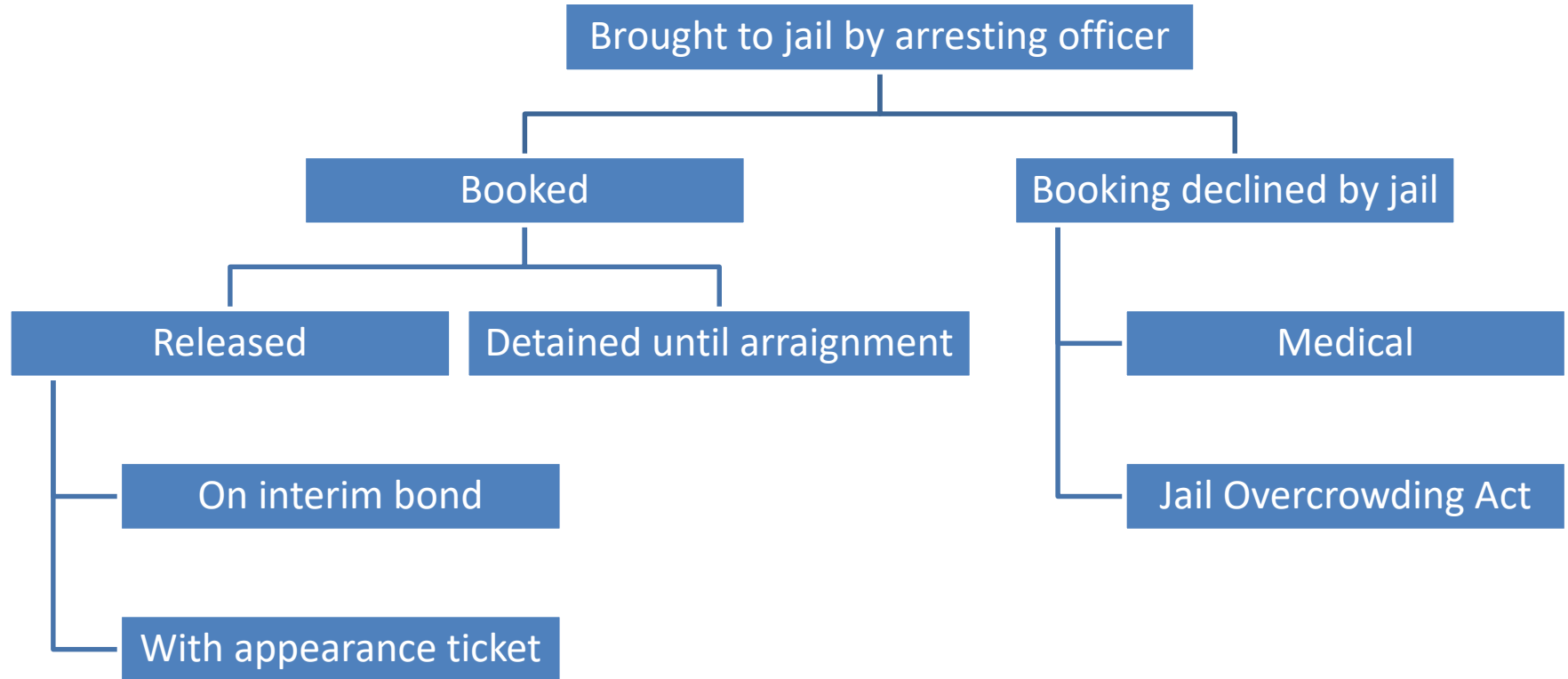
## Authority to arrest on view

- When officer witnesses a felony, misdemeanor, or ordinance violation
- When officer has probable cause to believe a misdemeanor punishable by at least 92 days or a felony has occurred

## Procedure for arresting officer

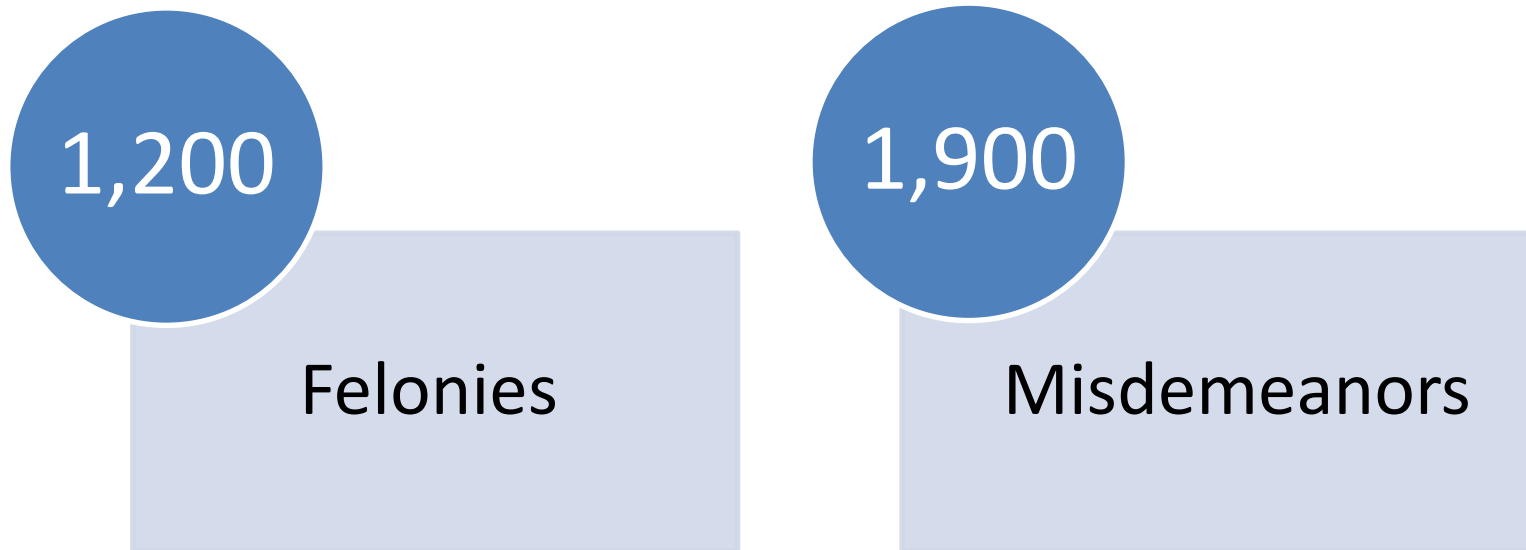
- Inform the person of officer's authority to make the arrest and the reason officer is making it
- Not delay in presenting the person to the local magistrate to hear the charges against them

# Booking and Pre-Arrest Release





There are around 3,000 statutory crimes with arrest eligibility.



# Michigan law authorizes citation for some misdemeanors.

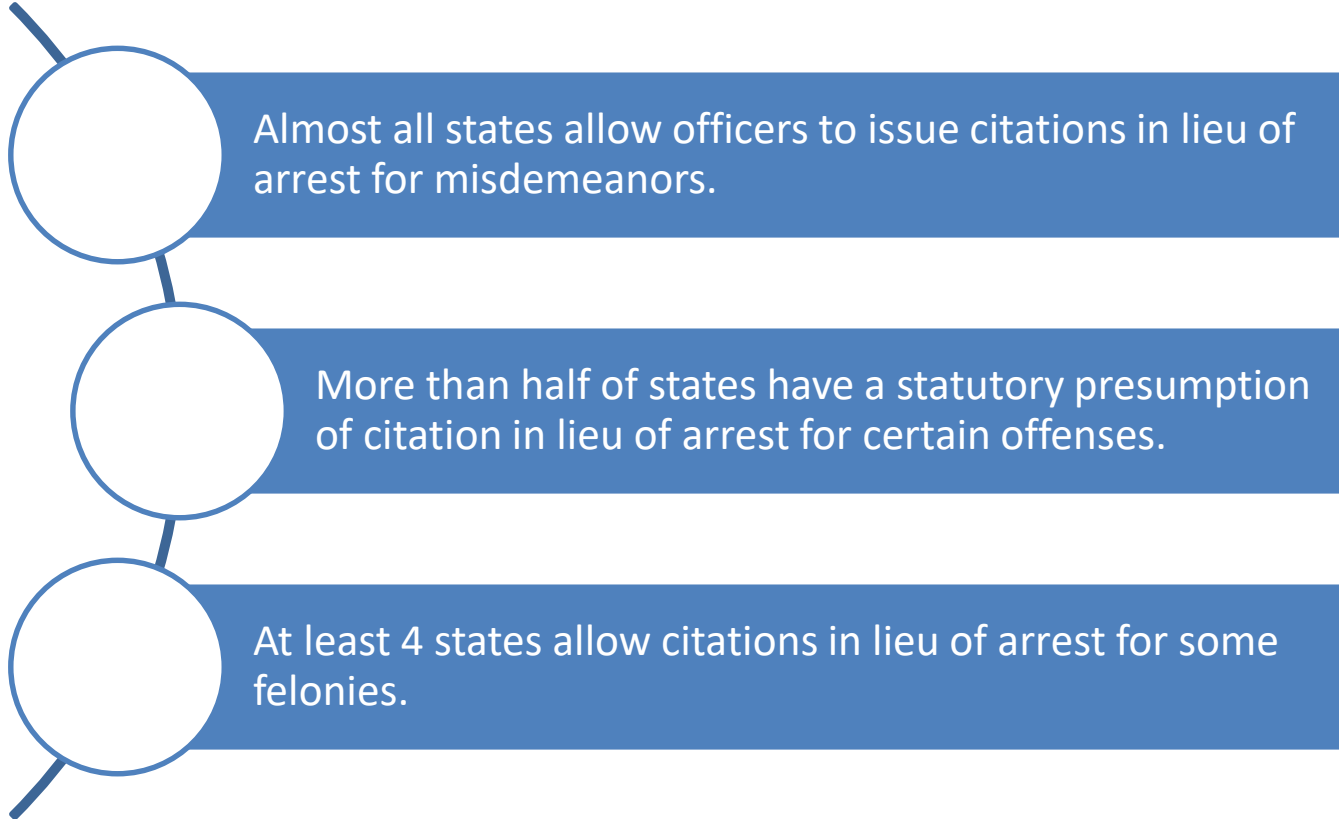
## Authority to cite

- When officer has probable cause to believe a misdemeanor or local ordinance violation punishable by no more than 93 days in jail has occurred

## Procedure for citing officer

- Issue and serve upon the person a citation
- Release the person from custody
- File a complaint in the local court charging the person named in the citation

# National Context on Citation Practices



# Common Non-Assaultive Misdemeanors Not Eligible For Citation

Larceny from  
vacant building

Retail fraud 2<sup>nd</sup>  
degree

Controlled  
substance use

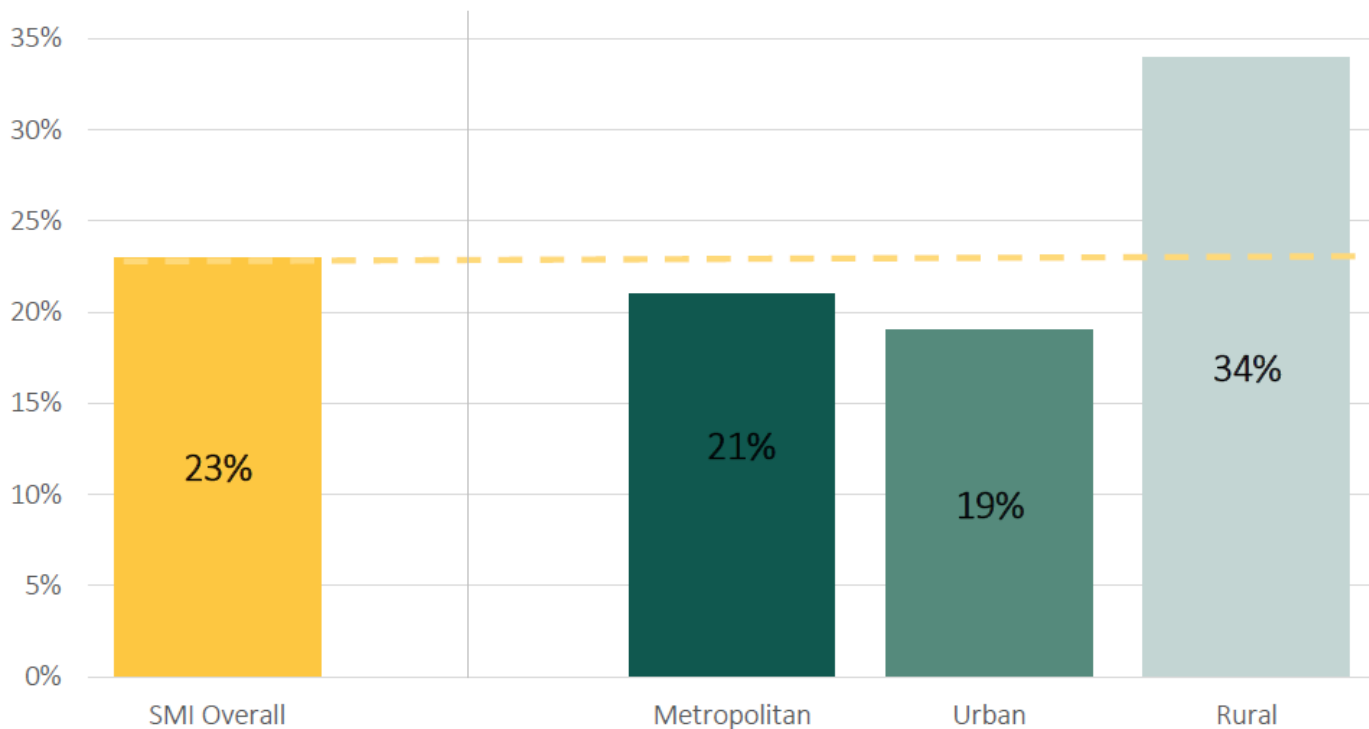
Invalid vehicle  
insurance

# Top reasons for arrest include citation-eligible offenses.

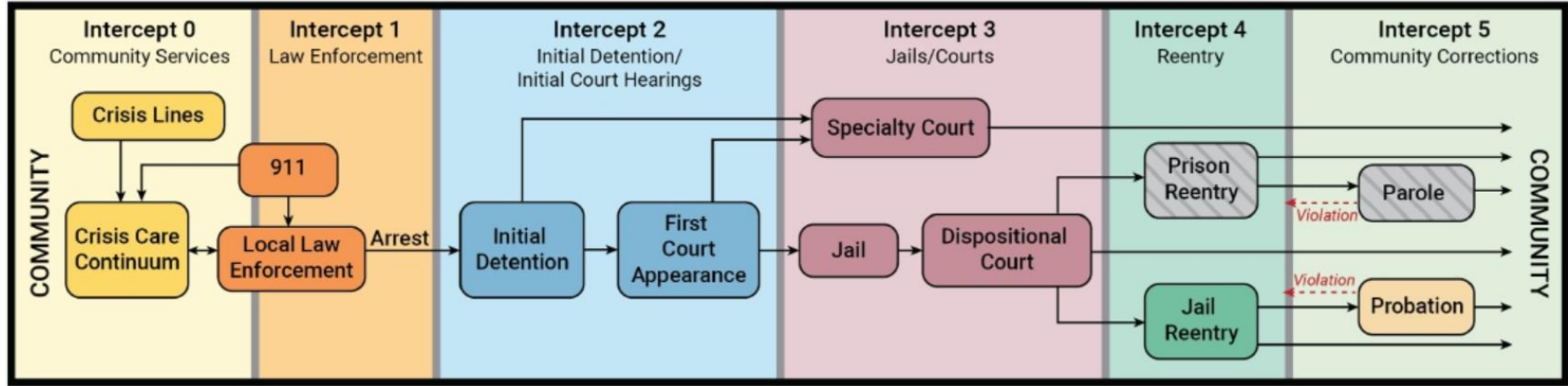
Top 10 Offenses for which Arrest Events Occurred, 2018	Count	% Cited
Failure to Appear	29,295	
Assault & Battery/Simple Assault	28,264	5%
Operating Under the Influence of Alcohol*	21,410	3%
Marijuana – Possess	14,419	23%
Retail Fraud Theft 3rd Degree	9,096	22%
Probation Violation	8,472	
Contempt of Court	6,803	
Obstructing Justice	5,443	
Disorderly Conduct	4,036	25%
Retail Fraud Theft 2nd Degree	3,706	

\*Note: OUI category includes Driving with BAC > 0.08 and “Super Drunk Driving” (BAC > 0.17), the latter of which was added as an offense between 2008 and 2018.  
Source: Statewide arrest data, 2008 to 2018, Michigan State Police.

There are high rates of mental illness in Michigan's jails, especially in rural areas.



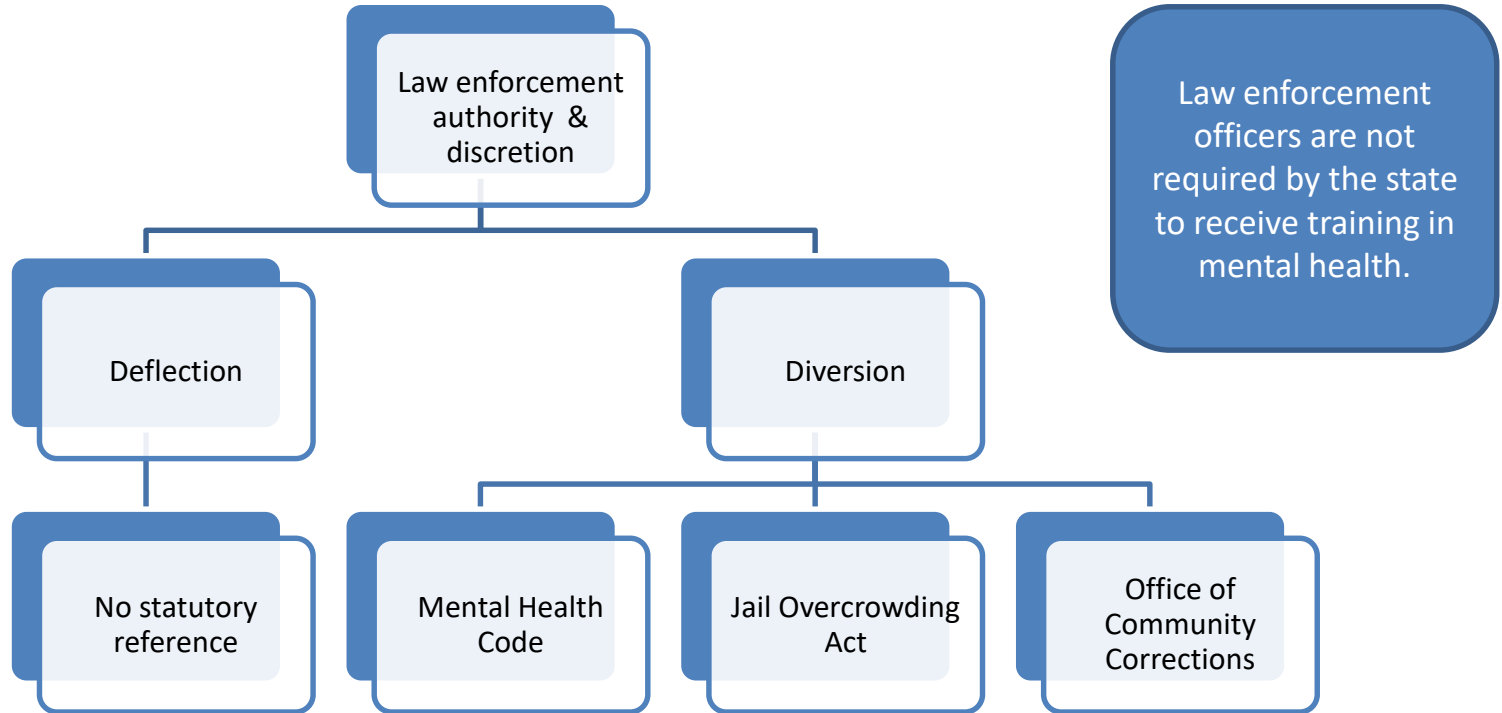
# Deflection and diversion connect individuals to service providers at early stages of system involvement.



↑  
Deflection  
from arrest

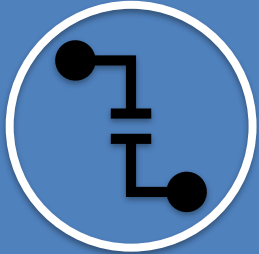
↑  
Diversion  
from jail

# Law enforcement has the authority to deflect and divert, but receives limited guidance and training.





The ability to utilize deflection or diversion varies widely across the state. Some counties have...



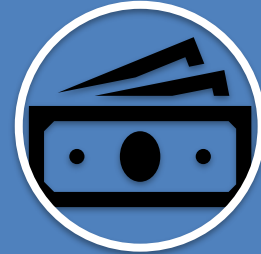
Limited or no  
collaboration  
between law  
enforcement and  
community service  
providers



Limited or no space at  
CMH or substance  
use disorder centers



Difficulty accessing  
funds from the Office  
of Community  
Corrections



Limited funding and  
other resources



# Examples of Deflection in Michigan

## Hope Not Handcuffs

- Participating agencies in 9 counties
- Departments agree not to arrest individuals with open nonviolent warrants

## Angel Program

- All MSP posts participating
- Connects substance users to evaluation and treatment

## Common Ground

- 24-hour drop-off center in Pontiac for individuals in crisis
- Also offers a Sober Support Unit and Mobile Crisis Intervention Teams

# Examples of Diversion in Michigan

Kent

## *Pre-booking diversion*

- Training officers in CIT and to better utilize the CMH triage center

Washtenaw

## *Post-booking diversion*

- Developed data linkage between jail and CMH databases

Marquette

## *Post-booking diversion*

- Sheriff's Office and CMH established a mental health diversion unit

# Policy Questions to Consider

- For what categories of offenses should officers have the discretion to issue citations in lieu of arrest?
- What state-level policies could support broader use of citation, deflection, and diversion?
  - Statutory guidance or presumptions
  - Training
  - Incentives
  - Resources
- Are there local models that could be adopted or adapted statewide?
- What steps should be taken to avoid jail overcrowding, and when?
- What services or supports could be provided to victims of crime at the point of law enforcement contact?

# Pretrial Release and Detention

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# Recap: Data Findings

## From national sources:

- On any given day, around half of MI's jail population is composed of unconvicted detainees

## From 2016-2018 jail sample:

- Of those able to bond out of jail, 33% served longer than two days, and 12% served longer than a week (does not include people detained for entire pretrial period)
- 55% of those released from jail were released on bond (were released before trial)

## From 2018 court data:

- The median jail credit for misdemeanors sentenced to time served was 5 days; the median credit for felonies sentenced to time served was 11 days

# Research Callback: What works to improve rates of court appearance and public safety?

## Secured bonds

- No more effective than unsecured bonds at ensuring court appearance or public safety

## Drug testing

- Does not improve appearance or public safety rates

## Court reminders

- Significantly improve appearance rates

## States with recent bail changes

- Show high rates of:
  - Release
  - Appearance
  - Public safety

# Research Callback: What works to protect victims pretrial?

- Victim advocacy, outreach, shelter, and safety planning services reduce re-victimization.
  - *Formal strategies (such as shelters or safety and advocacy services) reduce revictimization and the fear of victimization.*
- Women with protection orders were less likely to experience:
  - *Contact with assailant*
  - *Injuries*
  - *Abuse-Related Medical Cases*
  - *Physical Abuse*
  - *Psychological Abuse*
  - *Emotional Abuse*
  - *Threats*



# Constitutional Considerations

- “In our society liberty is the norm and detention prior to trial... is the carefully limited exception.”
  - *United States v. Salerno* (1987)
- The bail process must be individualized.
  - *Stack v. Boyle* (1951)
- Pretrial detention caused by an inability to pay a sum of money is illegally discriminatory.
  - Recent federal and state court rulings in AL, DC, GA, IL, LA, MO, MS, TN, and TX; *Ross v. Blount* (2019) pending in MI

# Michigan's Mix of Laws, Rules, and Constitutional Requirements

<b>US Constitution</b>	Bail decision must be individualized and non-arbitrary; release is the norm, detention is the exception
<b>MI Constitution</b>	MI's "detention net"; prohibition on excessive bail
<b>MI Laws</b>	Bail; interim bail; offense-specific bail laws
<b>MI Court Rules</b>	Majority of pretrial procedure; MI's presumption of release on recognizance; list of bail factors; details of money bail options
<b>Local Orders or Rules</b>	Local interim bond orders/schedules
<b>Practice</b>	Charging variances; unwritten local exceptions to state law

# Roadmap: Pretrial Release and Detention

- Arraignment: timing and representation
- The release decision: the options available to judicial officers (judges & magistrates)
- Review of the release decision
- Money bail
- Mandatory money bail
- Conditions of pretrial release
- Interim bond / interim bail

# Arraignment

## Timing

- Arraignment must happen after arrest “without unnecessary delay”
- Cannot be more than 48 hours absent “extraordinary circumstances” (MI case law)
  - Local variation: in busy jurisdictions this can normally take the full 48 hours and sometimes longer; in other jurisdictions it is quicker

## Representation

- MIDC Minimum Standards, currently in implementation stage:
  - Initial pre-arraignment interview between counsel and defendant
  - Counsel at first appearance (usually arraignment)

# Required Considerations When Setting Bail

Bail Statute	Bail Court Rule	Misd. & Traffic Offenses
<ul style="list-style-type: none"><li>• Seriousness of offense charged</li><li>• Protection of public</li><li>• Previous criminal record and dangerousness of person accused</li><li>• Probability or improbability of appearance at trial</li><li>• Record findings on all of the above (often not generated)</li></ul>	<ul style="list-style-type: none"><li>• Any facts bearing on risk of nonappearance or danger to the public, including, among others:<ul style="list-style-type: none"><li>○ Criminal record</li><li>○ History of court appearance</li><li>○ Employment status</li><li>○ Financial history</li></ul></li><li>• Court must make record findings stating reasons before imposing money bail</li></ul>	<ul style="list-style-type: none"><li>• Sufficient to assure compliance with conditions</li><li>• Not oppressive</li><li>• Commensurate with the nature of the offense</li><li>• Considerate of past conduct &amp; “financial ability”</li><li>• The same whether paid by the person or by a surety</li></ul>

# Pretrial Release and Detention: Three Options for a Magistrate or Judge



1. Detention Without Bond

2. Release on Recognizance or Unsecured Bond

3. Release With Conditions\*

# Option 1. Detention Without Bond: Michigan's "Detention Net"

A court may detain without bond anyone charged with:

- **Murder**
- **Treason**
- **Criminal sexual conduct, 1<sup>st</sup> degree**
- **Armed robbery**
- **Kidnapping with the intent to extort**
- **A violent felony**
  - Committed when on community supervision related to a prior violent felony; or
  - With 2 or more prior violent felony convictions in the preceding 15 years

## Option 2. Release on Recognizance, with Standard Conditions

If not held without bond, court must release defendant on personal recognizance, or on unsecured appearance bond, subject to following conditions:

The person charged:

- will appear as required
- will not leave the state without permission of court
- will not commit any crime while released



## Option 3. Release With (Special) Conditions

If court determines that ROR:

**will not reasonably ensure the appearance of the defendant**

or

**will present a danger to the public**

it may impose special conditions, including:

- In person or remote reporting
- No alcohol/drug use
- Drug or alcohol testing
- Mental health treatment
- Restrictions on associations, residence, employment
- Surrender of driver's license or passport
- Curfew
- Seeking employment
- Educational program
- Exclusion from certain areas or places
- No contact with other person or persons
- Any other condition

# Option 3(a). Money Bail: A Disfavored Option in MI Court Rule

## Initial presumption of ROR

“The court must order ... pretrial release ... on personal recognizance, or on an unsecured appearance bond”

## If not ROR, nonmonetary conditions presumed

If ROR will not reasonably ensure appearance and public safety:

Court may order pretrial release with additional conditions

## Money Bail

If additional conditions will not reasonably ensure appearance and public safety:

Court may impose money bail

# Review of Bail Decision: Limited Protections for Defendants Held on Money Bail

	If person is in custody for failure to pay bail, or failure to pay for a condition of release	If person is in custody after being detained without bond
<b>Burden of going forward</b>	Defendant	Defendant
<b>Timing of hearing</b>	None specified	None specified
<b>Parameters of hearing</b>	Some basic rights outlined in case law, including right to correct errors in record and present material evidence unavailable at initial bail hearing	Defendant is entitled to be present and be represented by counsel; the defendant and the prosecutor are entitled to present witnesses and evidence and cross-examine

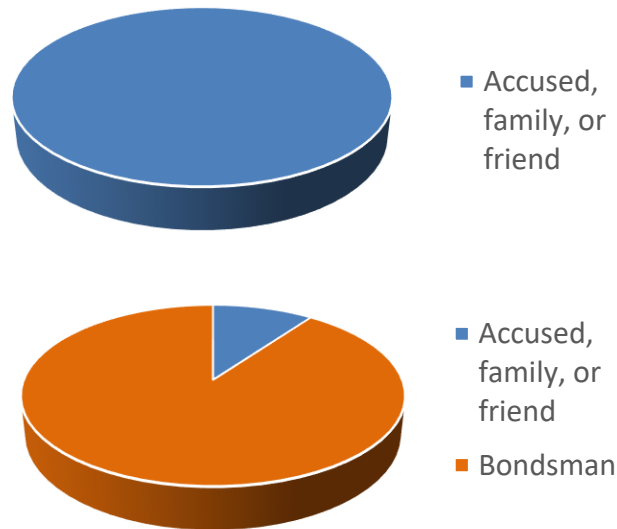
# Time Limits for People Detained Pretrial

Defendants held without bond	Felony defendants held before trial	Misdemeanor defendants held before trial
After 90 days, must either get a trial or have a new bond imposed	After 180 days, must be released on personal recognizance	After 28 days, must be released on personal recognizance
In practice, this rule is often waived by agreement of the parties	Exception: a court may continue to detain if it finds by clear and convincing evidence that the defendant is likely either to:	
At the 90 day bond hearing, a judge may also convert to a high money bail		
	<ul style="list-style-type: none"><li>• fail to appear for future proceedings; or</li><li>• present a danger to another person or the community</li></ul>	

# Judges may impose two types of money bail.

**Option 1: Full payment required for release (“cash bond”).** A judge may set bail and require full payment of the bail amount.

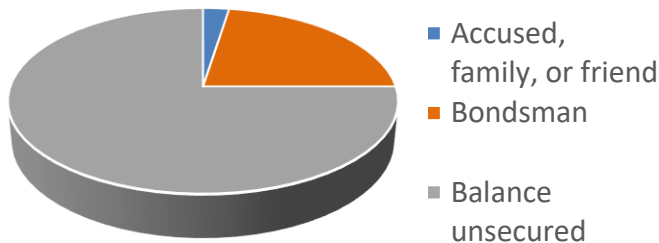
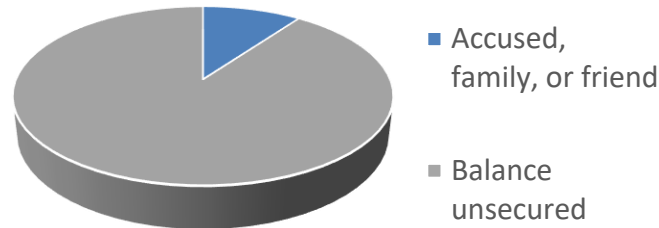
- Defendant then chooses:
  - Pay full bail amount to court, either themselves or via family or friend
  - Hire court-approved surety, who may pay full bail amount to court, and who will then generally charge ten percent of full bail amount as non-refundable fee



# Judges may impose two types of money bail.

**Option 2: Partial payment required for release (“10% bond”).** A judge may require partial payment of the bail amount.

- Defendant then chooses:
  - Pay court cash deposit of 10% of full bail amount, either themselves or family/friend
- Hire court-approved surety, who may pay 25% (1/4) of full bail amount to court, and who will then generally charge 2.5% of full bail amount (10% of 25%) as non-refundable fee



# Mandatory Money Bail

Offense committed by defendant after personally posting bail on another offense:	Offense w/ two or more felonies convictions in past five years:	Failure to Pay Child or Spousal Support:
Full cash bail  or  Court-approved bail bondsman	Full cash bail  or  Court-approved bail bondsman	Cash bond of at least: <ul style="list-style-type: none"><li>• \$500 or 25% of support owed, whichever is greater</li><li>• Up to 100% of total amount of support owed</li></ul>

# Condition of Release: Drug Testing

## How common is it?

- In some counties, 90% or 100% of defendants are drug tested during the pretrial period; in some counties this rate is much lower
- A court may order testing in any criminal case

## Who administers?

- Differs by court
- Could be court staff, a private vendor, the probation department, community corrections, or the sheriff's office

## Who sets the parameters?

- The condition comes from a judge's order
- In some places, private vendors ultimately set testing frequency and location

## What is the cost?

- Drug testing can cost the person being tested as much as \$30 per test

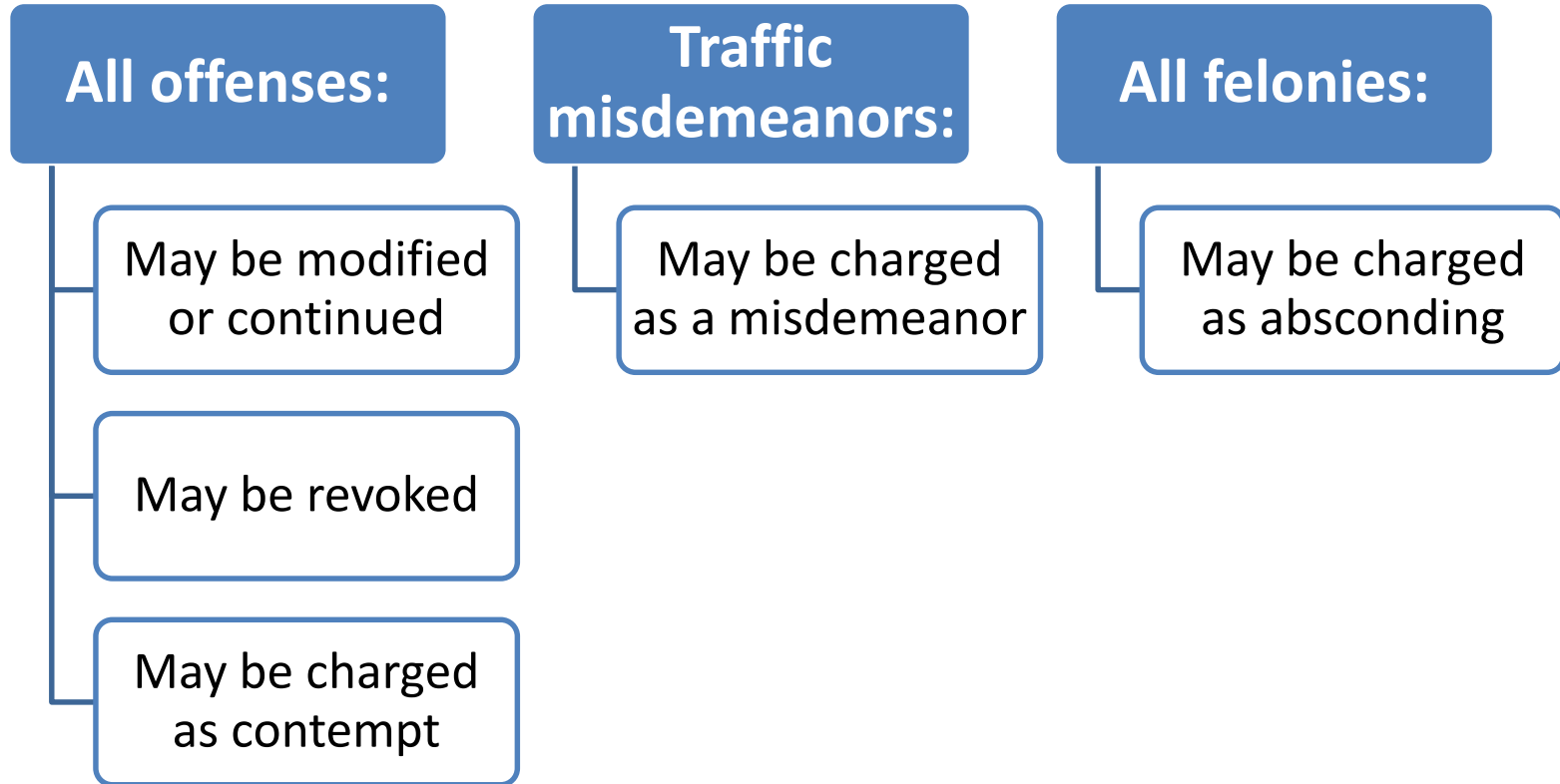


# Condition of Release: Electronic Monitoring (EM)

Where is it available?	Who administers?	Who sets the parameters?	What is the cost?
<ul style="list-style-type: none"><li>• Available in most jurisdictions in MI</li><li>• Some jurisdictions place 100% of defendants on EM</li></ul>	<ul style="list-style-type: none"><li>• Differs by court</li><li>• Could be court staff, a private vendor, the probation department, community corrections, or the sheriff's office</li></ul>	<ul style="list-style-type: none"><li>• The condition comes from a judge's order</li><li>• In some cases private vendors ultimately set specific liberty conditions, like curfew and exclusion zones</li></ul>	<ul style="list-style-type: none"><li>• EM can cost up to \$500 per month.</li><li>• A person who receives EM must agree to pay the cost of the device and monitoring, or to do community service instead*</li></ul>

\*Stakeholders indicated that despite this requirement, defendants regularly are jailed for inability to pay for EM. Sources: MCR 6.106(D); MCL 765.6b.

# Range of Penalties for Failure to Appear



# Interim Bail / Interim Bond

## **Definition and intended purpose:**

- A bond issued after arrest to secure a person's arraignment and "protect citizens from unnecessary incarceration and embarrassment from a minor offense."

## **Interim Bail for Warranted Arrests**

- An amount of money specified by a judge, in a warrant, at the time of its issuance. If arrested, the defendant may pay the amount and be released before arraignment. This is available for both misdemeanors and felonies, but is apparently uncommon for felonies.

## **Interim Bond Order / Interim Bond Schedule for Warrantless Arrests**

- A county-level, offense-specific schedule of amounts for specified misdemeanors, which may be paid by a defendant to secure their release before arraignment.

# Interim Bail Survey

Range of Interim Bond Amounts From Survey of District Courts		
Offense	Lowest	Highest
Attempted Resisting and Obstructing	\$100 or PR	\$10,000 (10%)
Disorderly Person	\$100 unsecured	\$350
DWLS, 1 <sup>st</sup>	\$100 unsecured	\$400
Retail Fraud 3 <sup>rd</sup> Degree	\$100 unsecured	\$700
Use of a Controlled Substance	\$100 or PR	\$20,000 (10%)

Source: SCAO Survey of District Courts, July 2019. Sample of 23 responding District Courts with standing interim bond orders. Select offenses listed.

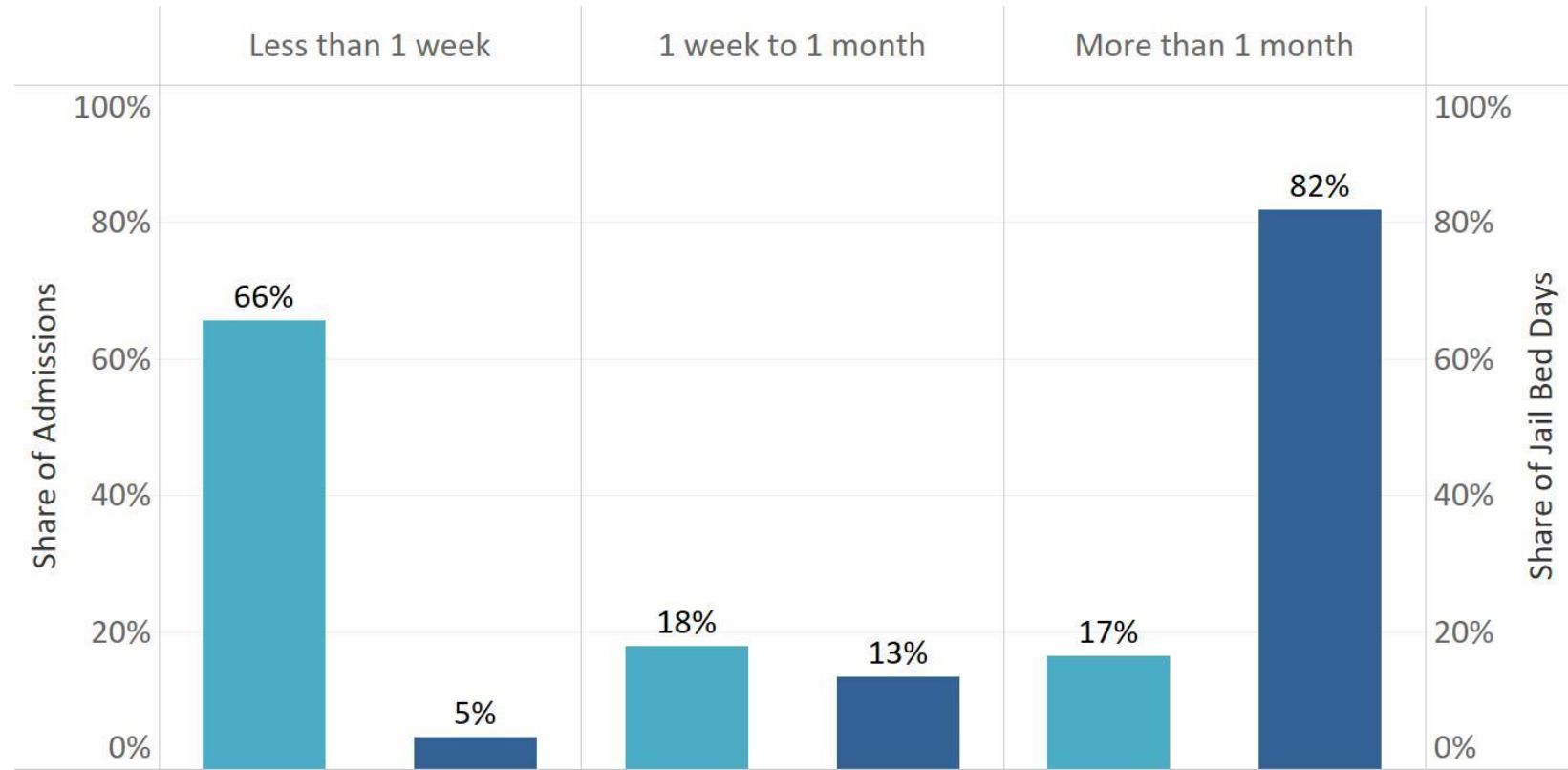
# Policy Questions to Consider

- Does MI provide sufficient due process protections for those subject to pretrial detention?
- Does MI provide sufficient pretrial supports for victims?
- How should the law account for release conditions that come with high financial costs, and that regularly result in detention for failure to pay or other violations?
- Considering the repeated finding that it increases recidivism and makes defendants less likely to appear for court, is pretrial detention overused?
- Is MI getting a good public safety return from its mandatory money bail laws?
- Are interim bond / interim bail practices achieving the purpose of the statute?

# Sentencing, Probation, and Parole

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# Sentencing: Data Callback



Distributions of jail admissions and jail bed utilization by length of stay, 2016-2018. Source: Sample of jail data, 2016 to 2018, various Michigan jails.

# Roadmap: Sentencing, Probation, and Parole

- Sentencing:
  - Misdemeanor and felony sentences
  - Other sentencing and release policies
- Probation and Parole:
  - Overview
  - Probation lengths and conditions
  - Probation violations
  - Parole



# Overview of Misdemeanor and Felony Sentencing

	Misdemeanors	Felonies
Defined In	MCL § 750.8	MCL § 750.7
Sentenced By	District Court Judges	Circuit Court Judges
Maximum Incarceration*	90 days to 1 year in jail, depending on offense	2 years to life in prison, depending on offense
Other Available Sentences	Up to 2 years* probation, fine, community service, other sanctions, or a combination	Up to 5 years* probation, fine, community service, other sanctions, or a combination
Sentences Informed By	PSI (upon judicial request)	PSI (required); sentencing guidelines (advisory)

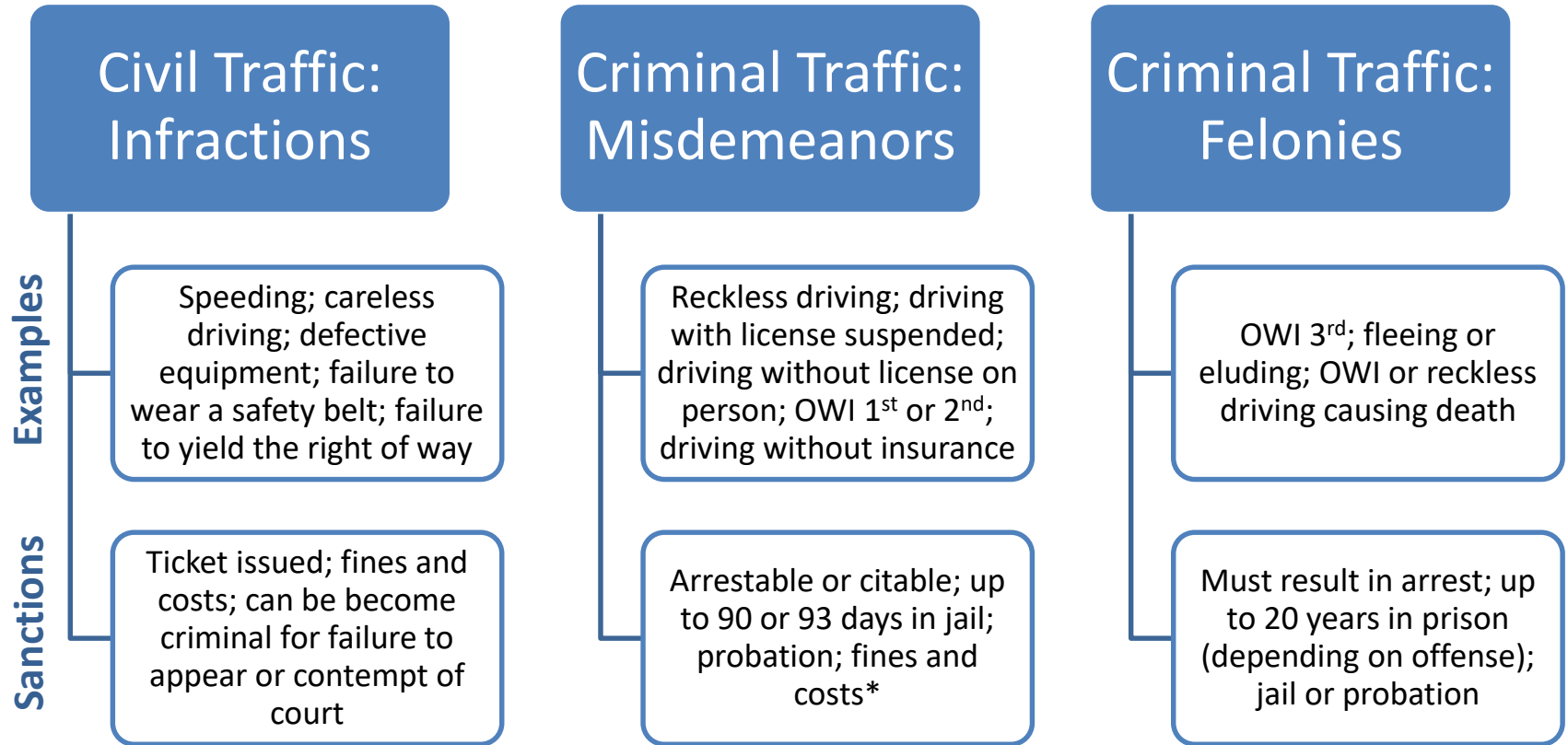
\*There are a few exceptions to maximum incarceration and maximum probation term in both cases. In addition, some felonies are not probation eligible.

# Most Common Charges Filed in District Court

Statute	Name	Maximum Jail Sentence in Days
257.904(1)	Operating - License Suspended, Revoked, Denied	93
257.311	Operating Without License on Person	90
257.301	Operating - No License/Multiple Licenses	90
500.3101a	Motor Vehicles - Invalid Certificate of Insurance	365
750.81(2)	Domestic Violence	93
333.7403(2)(d)	Possession of Marihuana/Synthetic Equivalents	365*
257.256	License Plate - Unlawful Use	90
257.215	Operate - Unregistered Vehicle	90
257.625(3)(a)	Operating - Impaired	93
257.625(1)(a)	Operating While Intoxicated	93

Source: State Court Administrative Office, Judicial Data Warehouse, 2018. \*Possession of marijuana up to 2.5 ounces was legalized via ballot initiative in 2018.

# Continuum of Traffic Offenses



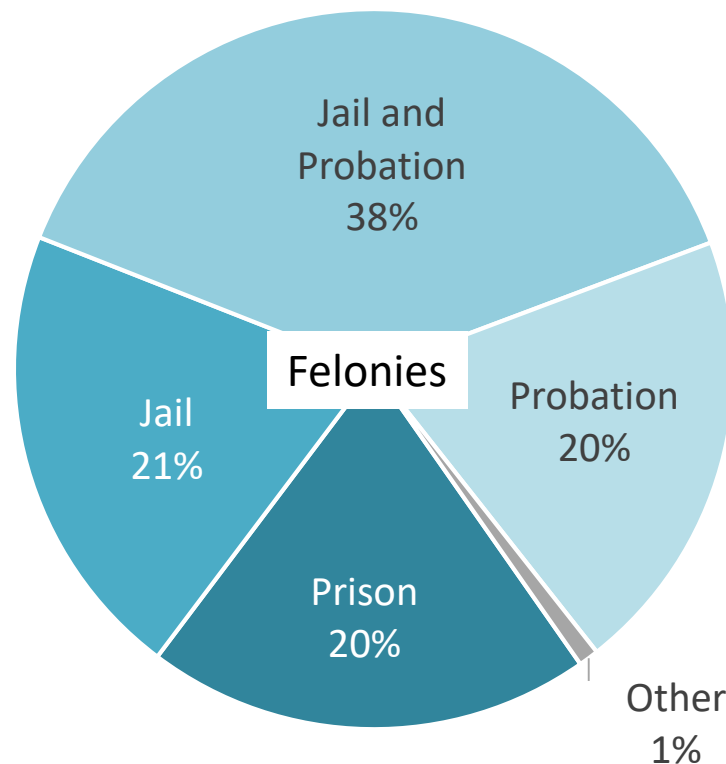
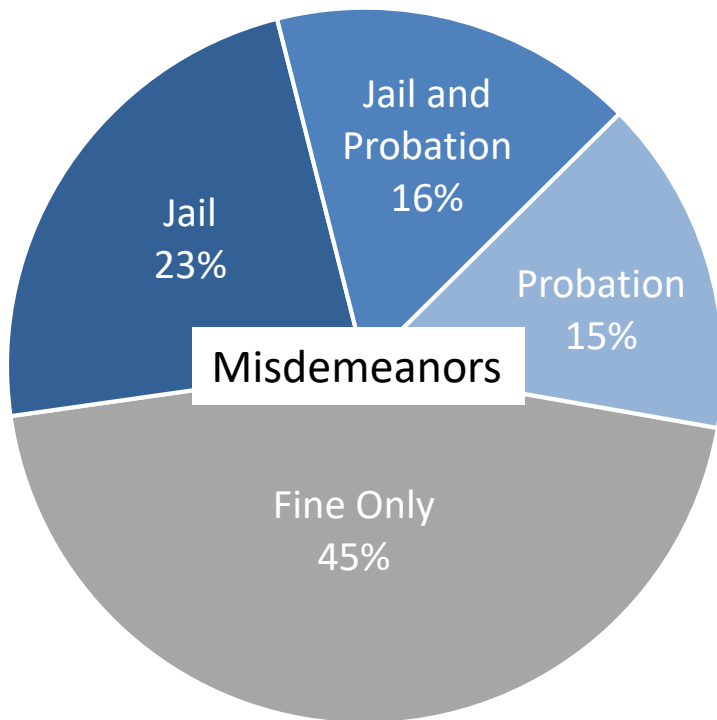
\*Additional misdemeanors beyond those listed carry up to 180 or 365 days in jail and are not citable. Source: Michigan Motor Vehicle Code (Chapter 257).

# Operating with License Suspended, Revoked, or Denied

**MCL § 257.904 (1)** A person whose operator's or chauffeur's license or registration certificate has been suspended or revoked, whose application for license has been denied, or who has never applied for a license, shall not operate a motor vehicle...

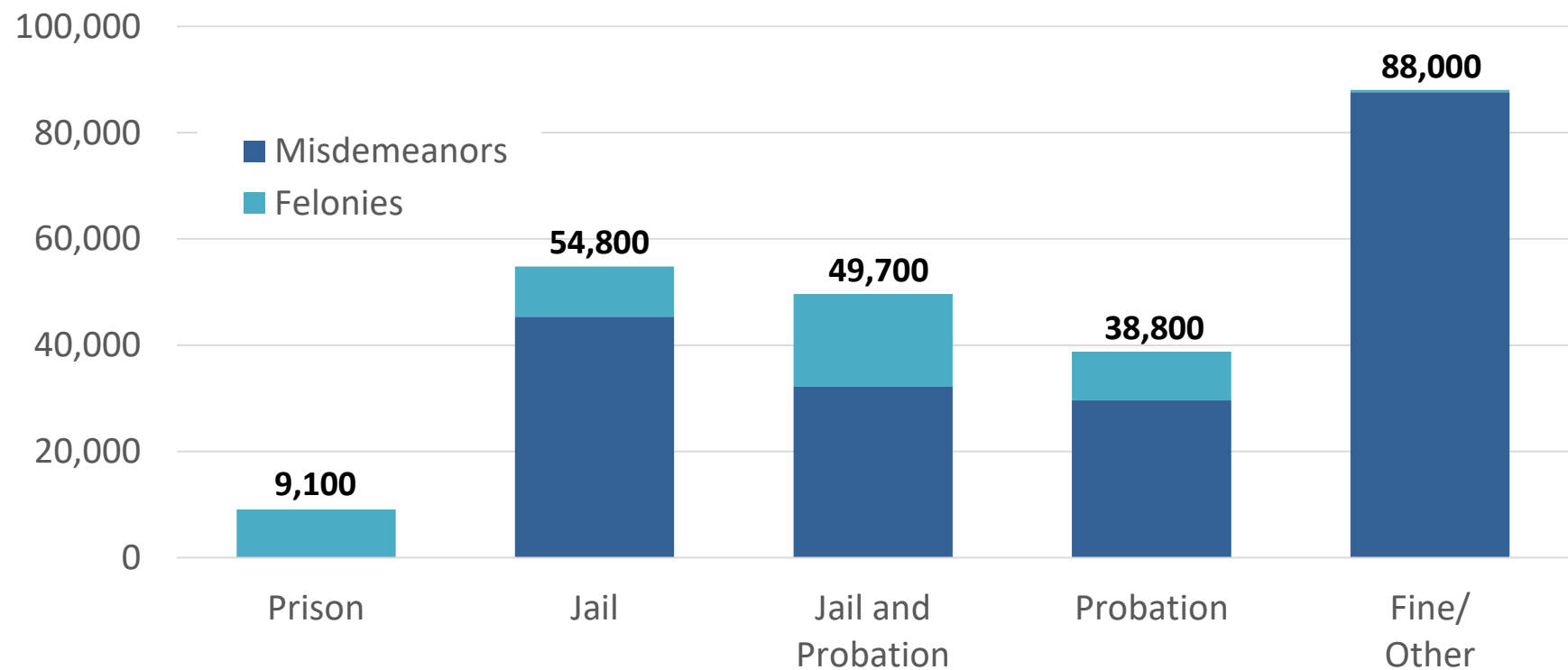
- Reasons for license suspension:
  - Failure to comply with court process
  - Conviction of some specific offenses
  - Pretrial release condition
- Steps to get license reinstated:
  - Clear any outstanding court matters
  - Pay \$45 to court
  - Pay \$125 to Secretary of State

# Types of Misdemeanor and Felony Sentences



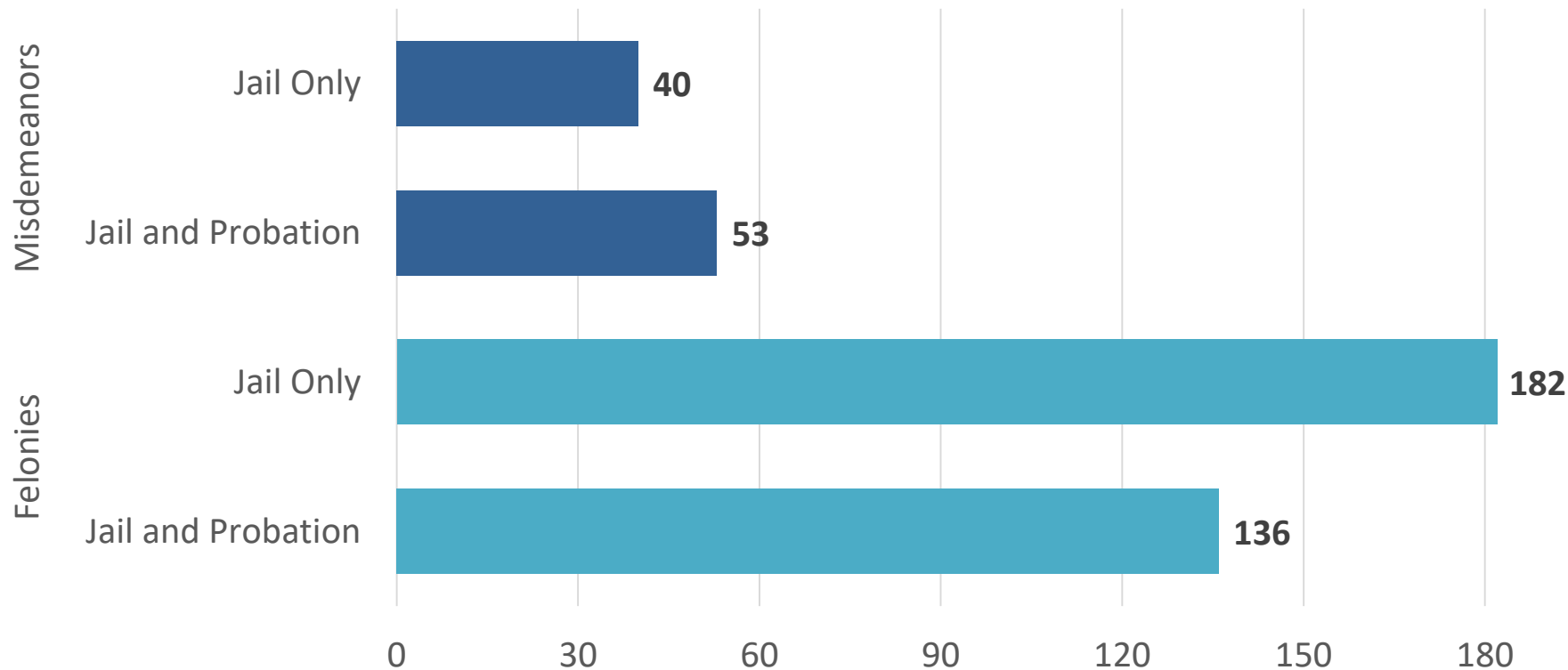
Distribution of types of misdemeanor and felony dispositions statewide, 2018. Note: Sentence information was available for 90% of misdemeanors. Sources: State Court Administrative Office, Judicial Data Warehouse; Michigan Department of Corrections Statistical Report 2018.

# Types of Misdemeanor and Felony Sentences



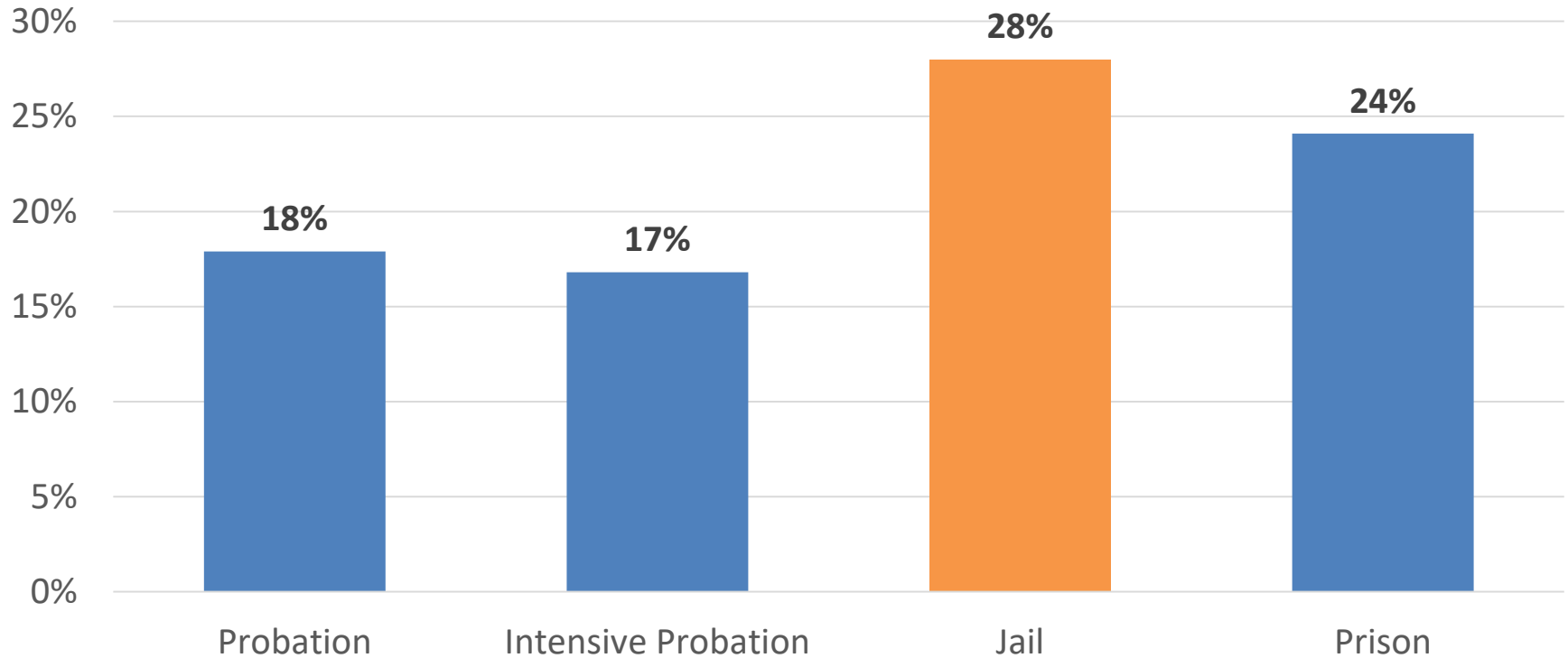
Total sentences in 2018, by sentence type and crime level. Note: Sentence information was available for 90% of misdemeanors.  
Sources: State Court Administrative Office, Judicial Data Warehouse; Michigan Department of Corrections Statistical Report 2018.

# Misdemeanor and Felony Sentences



Mean jail sentences in days by crime level and sentence, 2018. Sentence information was available for 90% of misdemeanors. Felonies do not include convictions statutorily sealed from public record. Sources: State Court Administrative Office, Judicial Data Warehouse; Michigan Department of Corrections, OMNI data.

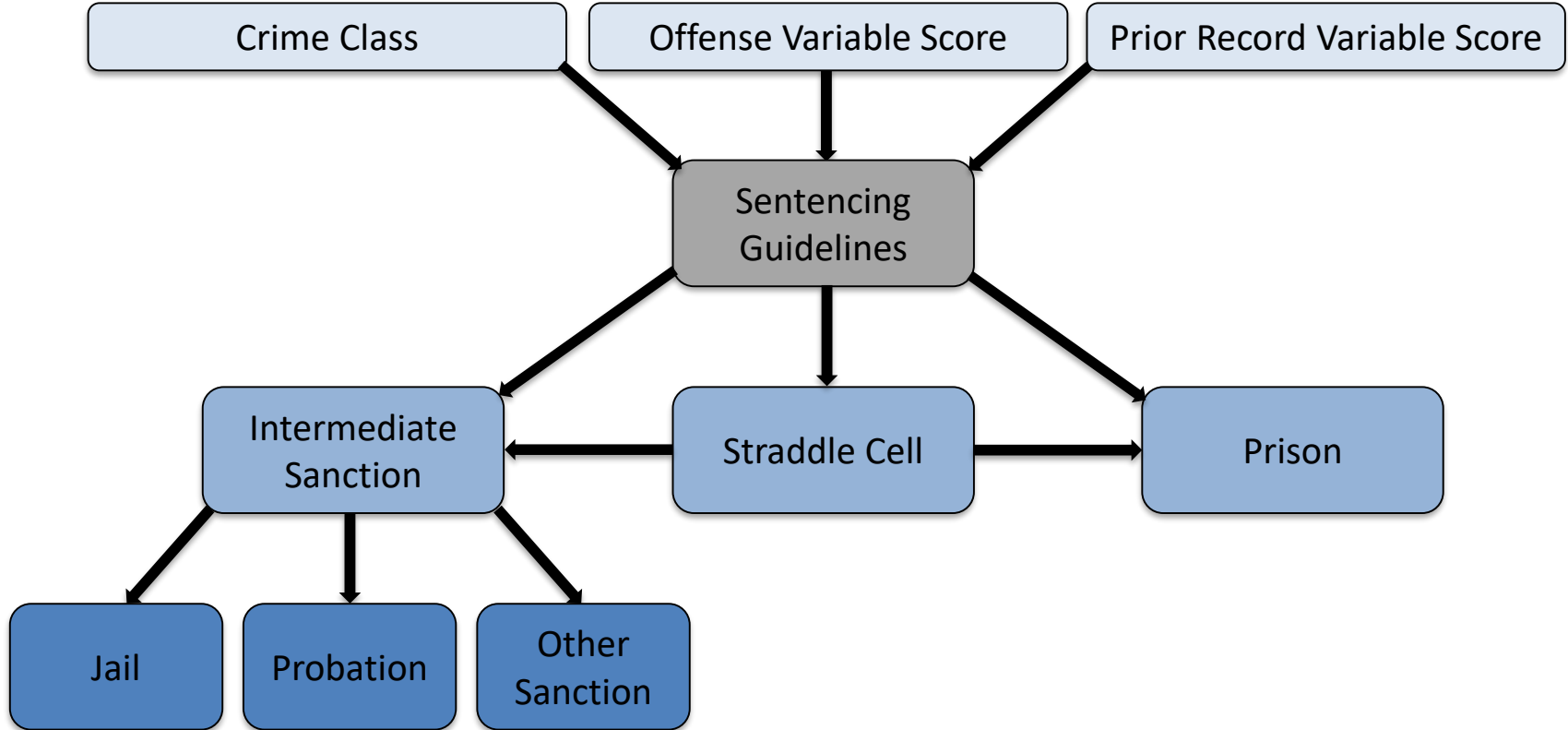
# Research Review: Recidivism Higher for People Sentenced to Jail



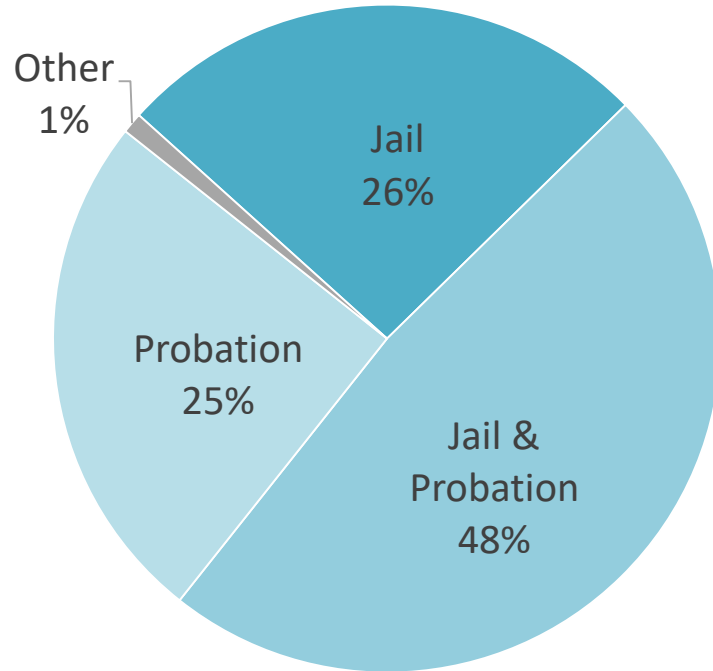
Felony reconviction rates for people with first time felony convictions, jail vs. other sentences. Source: Mears, D., & Cochran, J. (2018). Progressively Tougher Sanctioning and Recidivism: Assessing the Effects of Different Types of Sanctions. *Journal of Research in Crime and Delinquency*, 55(2): 194-241.



# The Felony Sentencing Guidelines



# Intermediate Sanctions for Felony Offenses



- Selection of intermediate sanction options (MCL § 769.31):
  - Jail
  - Probation with jail
  - Probation with any conditions
  - Mental health treatment
  - Community service
  - Payment of a fine
  - House arrest
  - Electronic monitoring

# Deferred Judgment of Guilt

## Eligibility

- Offense-based (very limited)
- Based on specific participation in specialty court
- Age-based (HYTA)
- No traffic offenses

## Process

- Defer judgment of guilt and place on probation
- If successful, discharge and dismiss charge
- If unsuccessful, enter judgment of guilt and proceed to sentencing

# Holmes Youthful Trainee Act (HYTA)

**MCL § 762.11** If an individual pleads guilty to a criminal offense, committed on or after the individual's 17th birthday but before his or her 24<sup>th</sup> birthday, the court ... may, without entering a judgment of conviction and with the consent of that individual, consider and assign that individual to the status of youthful trainee.

- **Eligibility:**
  - Age 17 to 20
  - Age 21 to 23 with prosecutorial consent
  - Judge can choose to use more than once
- **Offense exclusions:**
  - Traffic offenses
  - Major drug offenses
  - Criminal sexual conduct
  - Felonies punishable by life imprisonment

# Reductions in Jail Time Served

## MCL § 51.282

### Sheriff's Good Time

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- Every prisoner whose record shows that there are no violations of the rules and regulations shall be entitled to a reduction from his or her sentence as follows: 1 day for each 6 days of the sentence.

## MCL § 801.257

### Quarter Reduction

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- A prisoner may receive, if approved by the court, a reduction of 1/4 of his or her term if his or her conduct, diligence, and general attitude merit such reduction.

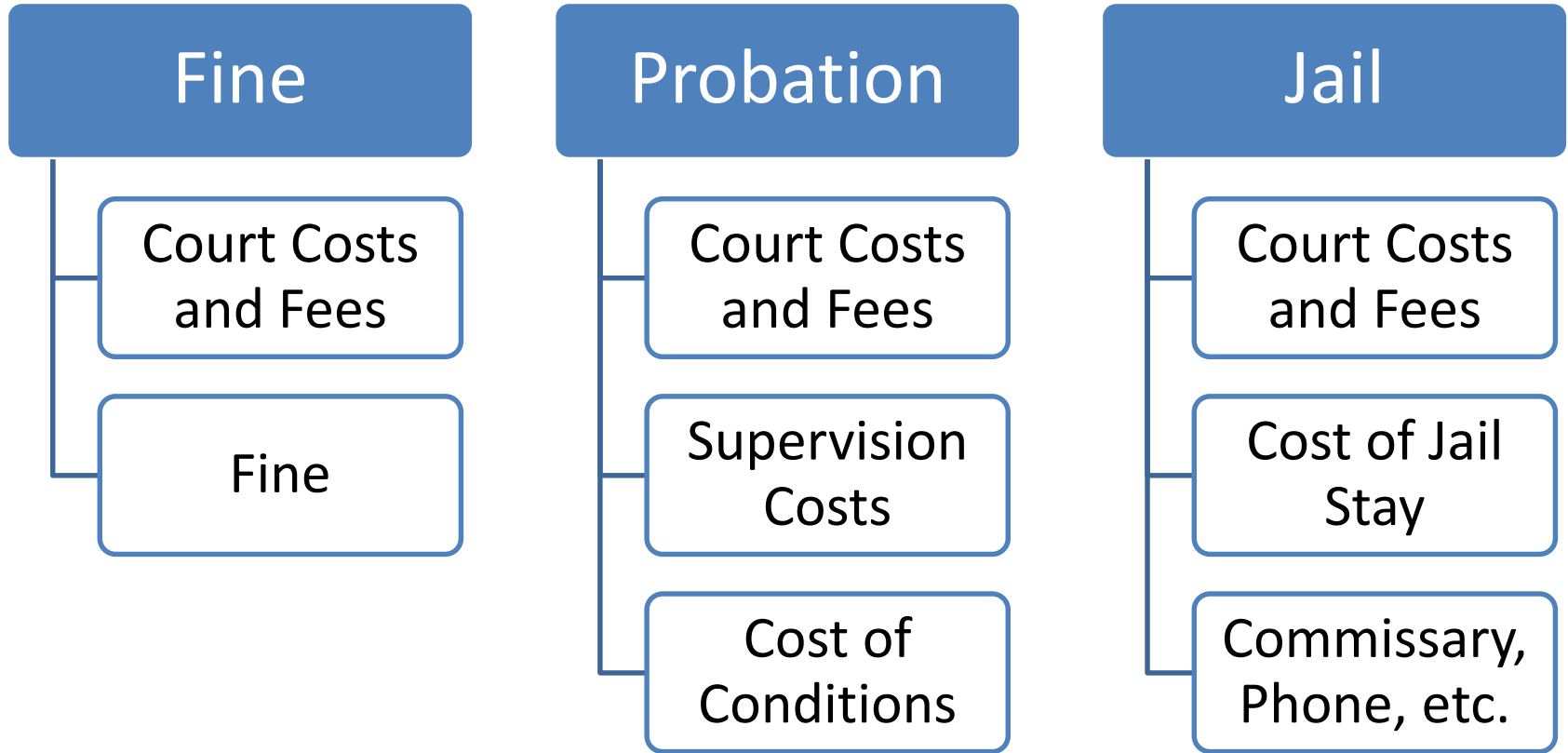
## MCL § 801.57

### Jail Overcrowding Act

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- ... The original sentences, not including good time, of all prisoners sentenced to and housed in the county jail ... shall be equally reduced by the sheriff by the least possible percentage reduction necessary, not to exceed 30%...

# Monetary Costs of Different Sentences



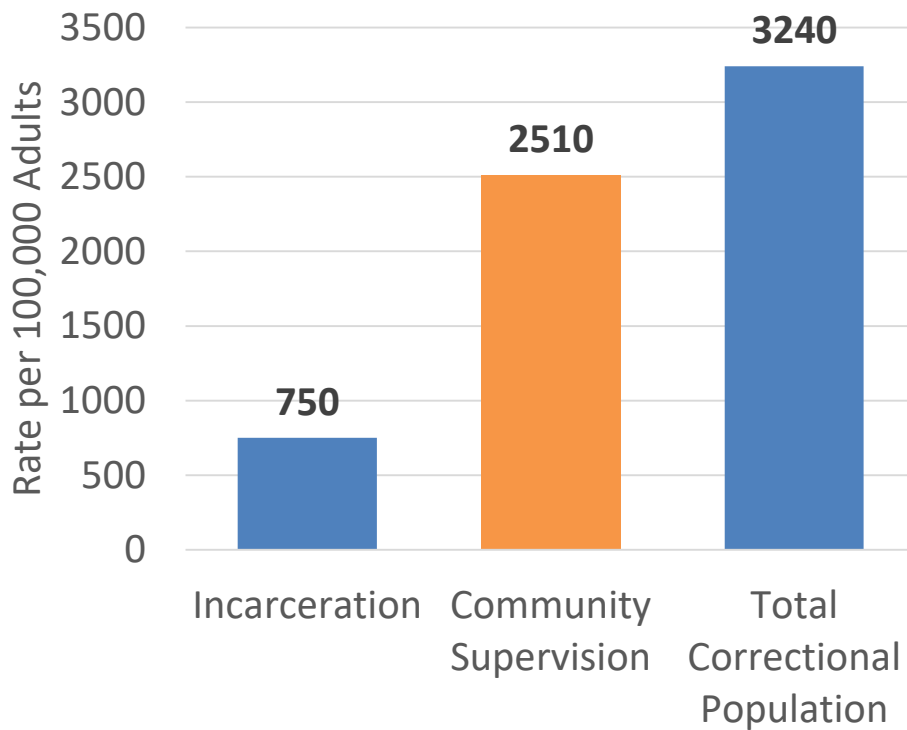
# Overview of Probation and Parole: Data Callback

Top 10 Offenses, Most Serious Charge for Individuals in Jail	Percent of Population
Other Person Offense	14%
Assault	13%
Probation/Parole Violation	10%
Operating Under the Influence	8%
Theft	8%
Possession or Use of Controlled Substance	8%
Delivery or Manufacture of Controlled Substance	6%
Obstruction of Justice	6%
Domestic Violence	5%
Other Property Offense	4%

Distribution of top 10 offenses (most serious charge on record), jail population on 12/1/2018. Source: Sample of jail data, 2016 to 2018, various Michigan jails.

# Overview of Probation and Parole: Context

- Michigan has 6<sup>th</sup> highest rate of people on community supervision in the country
  - All those people are at risk for violation or revocation to jail
  - Despite being 29<sup>th</sup> for incarceration rate, MI is 7<sup>th</sup> for total correctional population rate



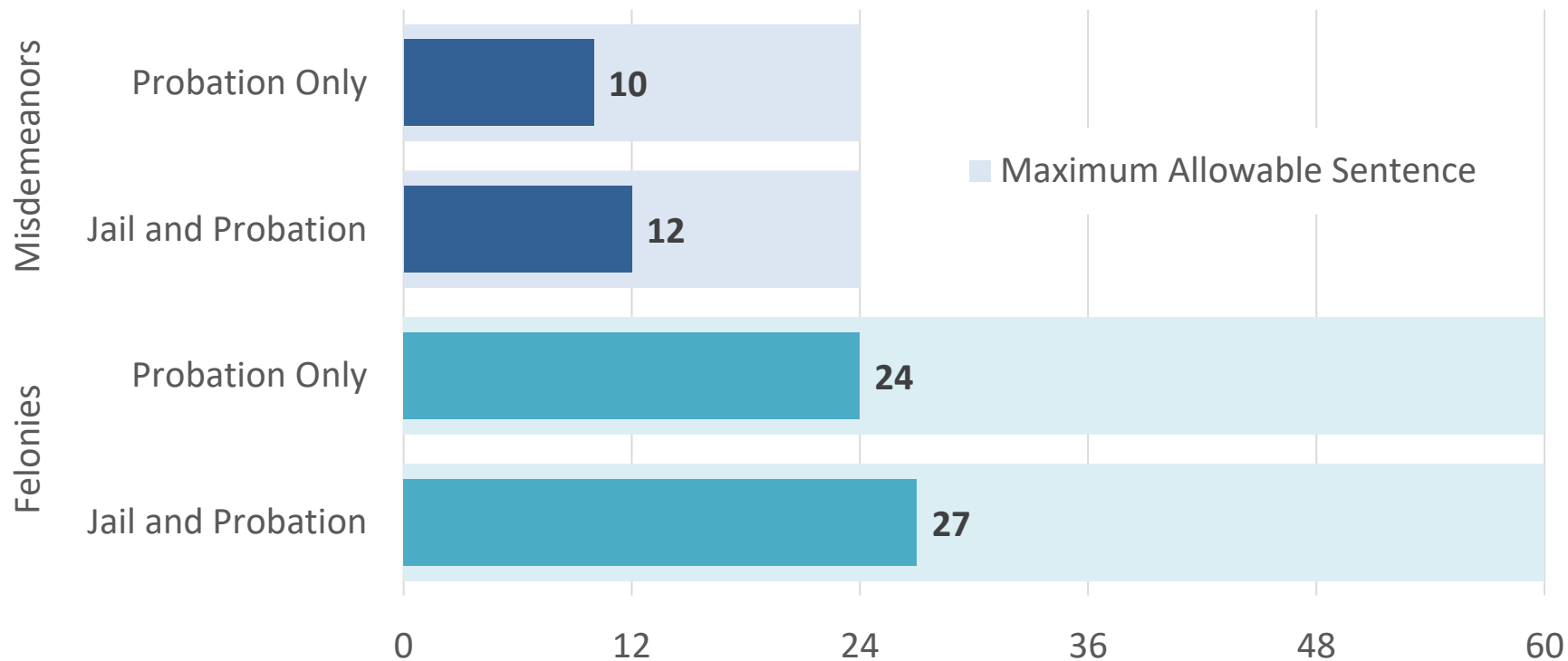


# Overview of Misdemeanor and Felony Probation

	Misdemeanor Probation	Felony Probation
<b>Supervised By</b>	District Court Probation Officers	MDOC Probation Officers
<b>Centralized Practices</b>	Limited; some guidance from SCAO	MDOC policies; still subject to variation in judicial discretion
<b>Maximum Length</b>	2 years	5 years
<b>Under Jurisdiction Of</b>	District Court Judges	Circuit Court Judges
<b>Maximum Penalty for Violation</b>	Revocation to jail	Revocation to prison (in some cases)

Notes: Felony cases that are reduced to misdemeanors in circuit court are still supervised by MDOC probation officers and under the jurisdiction of the circuit court judge. There are a few exceptions to the maximum probation sentence length in both cases.

# Lengths of Probation Supervision



Mean sentenced probation lengths in months, 2018. Notes: Sentence information was available for 90% of misdemeanors. Felonies do not include convictions statutorily sealed from public record. Sources: State Court Administrative Office, Judicial Data Warehouse; Michigan Department of Corrections, OMNI data.

# Common Conditions of Probation Supervision



In-person reporting to probation agent



Payment of fines and costs



Payment of restitution



Regular drug testing



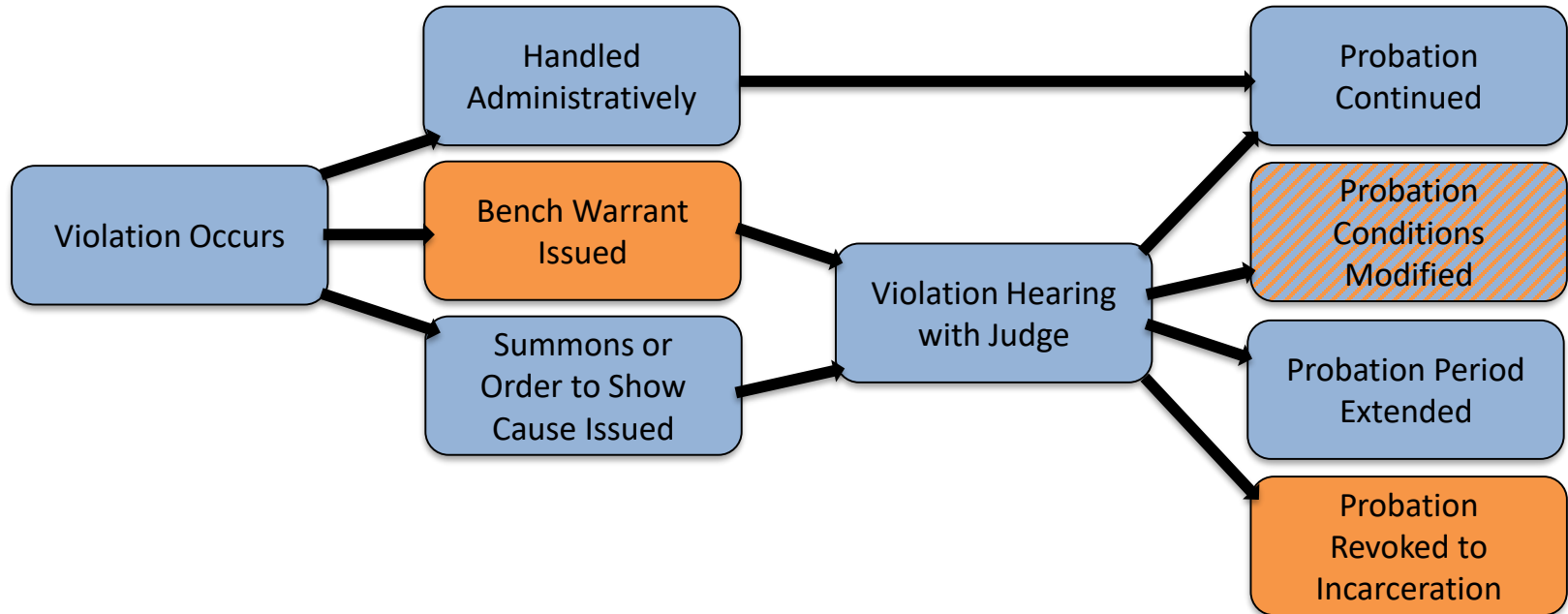
Electronic monitoring



Treatment or programming

# Probation Violations: Current Practice

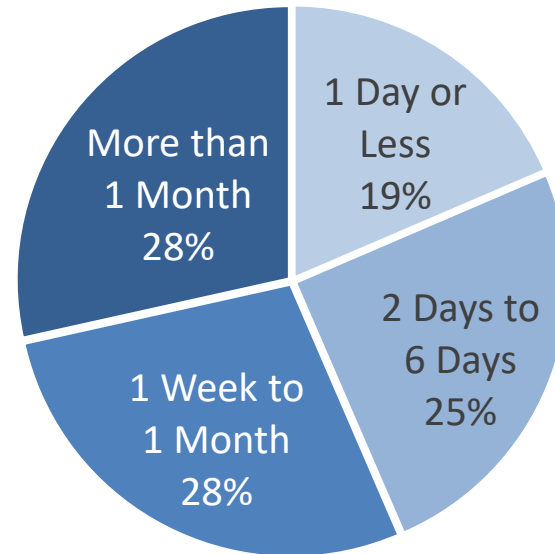
**MCL § 771.4** It is the intent of the legislature that the granting of probation is a matter of grace conferring no vested right to its continuance...



# Probation Violations: Current Practice

**MCLS § 771.4b** A probationer who commits a technical probation violation and is sentenced to temporary incarceration ... may be incarcerated for a maximum of 30 days for each technical violation.

- Became law in January 2018
- Applicable only for first two technical violations
- Some exceptions
- Some reports of unintended consequences



# Probation Violations: Research Principles

- To effect behavior change, responses to probation violations should be swift, sure, and proportional
- Incentives should be used in addition to sanctions
- Jail is no more effective than community-based sanctions at reducing future violations

Sources: See, for example, Hawken, A., & Kleiman, M. (2009). Managing drug involved probationers with swift and certain sanctions: Evaluating Hawaii's HOPE. Washington, D.C.: U.S. Department of Justice.; Wodahl, E.J., Garland, B., Culhane, S.E., & McCarty, W.P. (2011). Utilizing behavioral interventions to improve supervision outcomes in community-based corrections. *Criminal Justice & Behavior*; Morash, M., Kashy, D. A., Smith, S. W., & Cobbina, J. E. (2017). Technical violations, treatment and punishment responses, and recidivism of women on probation and parole. *Criminal Justice Policy Review*.

# Overview of Parole

**MCL § 791.238 (1)** Each prisoner on parole shall remain in the legal custody and under the control of the department... Pending a hearing upon any charge of parole violation, the prisoner shall remain incarcerated.

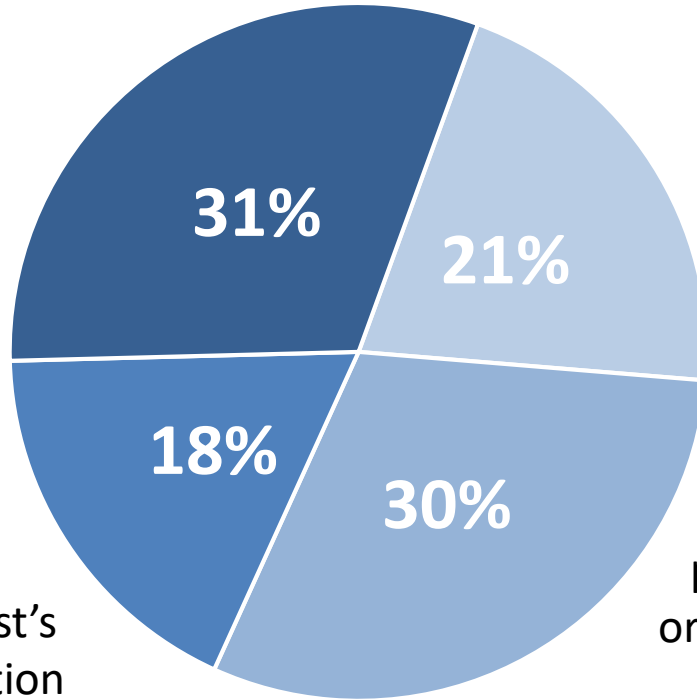
## Characteristics of parole:

- Occurs after completion of a prison sentence
- Term lengths and conditions are determined by MDOC Parole Board
  - Average term is around 12 months but can be extended by the Parole Board upon request by a parole agent
- Served under the jurisdiction of MDOC

# Parole Violation Process

**16 to 45 days:** Awaiting transfer back to prison on parole revocation

**11 to 15 days:** Awaiting Parole Violation Specialist's decision on parole violation



**4 days or less:** Awaiting investigation of a violation or serving a “quick dip” sanction at agent’s discretion

**5 to 10 days:** Awaiting preliminary violation hearing or serving “quick dip” sanction with supervisor’s approval



# Policy Questions to Consider

## Sentencing:

- Are there offenses that should be handled with civil rather than criminal remedies?
- When should probation be the presumptive sentence for a misdemeanor instead of jail?
- Should the sentencing grid separate out probation from jail as an intermediate sanction?
- Who should be eligible for deferred judgment of guilt?

## Probation and parole:

- How long should someone be on probation?
- Are there good models for standardizing misdemeanor probation practices statewide?
- When should jail be used for felony probation violations and for how long?
- Is the process for early termination from felony probation working?
- When should alternative sanctions be used in place of jail time for parole violations?

# Acknowledgments

*Many thanks to the stakeholders across Michigan who provided their perspectives and contributed expertise during the system assessment process.*

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[www.courts.mi.gov/micjreform](http://www.courts.mi.gov/micjreform)

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